

DÁIL ÉIREANN

AN COMHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AGUS ATHCHÓIRIÚ, AGUS AN TAOISEACH

JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM, AND TAOISEACH

Déardaoin, 7 Nollaig 2017

Thursday, 7 December 2017

Tháinig an Comhchoiste le chéile ag 9 a.m.

The Joint Committee met at 9 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Joan Burton,	Paddy Burke,
John Deasy,	Kieran O'Donnell.
Pearse Doherty,	
Paul Murphy.	

Teachta / Deputy John McGuinness sa Chathaoir / in the Chair.

The joint committee met in private session until 10 a.m.

Scrutiny of EU Legislative Proposals

Chairman: I wish to record the decisions taken by the joint committee on EU proposals. On the EU ESA package of proposals, COM (2017) 536 and COM (2017) 537, the committee agreed to submit a political contribution to the EU institutions. It also agreed that COM (2017) 538 and COM (2017) 539 did not warrant further scrutiny.

The committee agreed that the EU proposals listed in Schedule A, COM (2017) 569, COM (2017) 597 and COM (2017) 615, did not warrant further scrutiny. It agreed that the EU proposals listed in Schedule B, COM (2017) 609, COM (2017) 621, COM (2017) 624 and COM (2017) 639, also did not warrant further scrutiny.

Details of the committee's decisions on EU proposals are published on its public website.

Business of Joint Committee

Chairman: I welcome Deputy John Deasy to the joint committee and wish him an ongoing recovery. I look forward to his contributions.

Deputy John Deasy: Thank you.

Matters relating to Tracker Mortgage Examination and Consumer Protection Framework: Discussion

Chairman: I welcome Mr. Ger Deering, Financial Services Ombudsman, and Ms Isolde Goggin, chairperson of the Competition and Consumer Protection Commission.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the joint committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

I invite Mr. Deering and Ms Goggin to make their opening remarks. The committee notes that the annual report of the Financial Services Ombudsman, FSO, has been laid before the Houses. It will assist the committee in today's hearing.

Mr. Ger Deering: I am pleased to have the opportunity, together with the Deputy Financial

Services Ombudsman, Ms Elaine Cassidy, to engage with the joint committee on the work my office is doing on tracker mortgages in co-operation with the Central Bank of Ireland. My office provides a free service for consumers to resolve complaints about their financial service provider. Our goal is to redress the balance of power between the individual consumer and provider. We do this by making our service as informal and accessible as possible. We mediate between the parties and, where necessary, investigate and issue legally binding findings.

The office has been dealing with tracker mortgage complaints since 2009. To date, we have received 1,838 complaints, in respect of 683 of which findings have issued. Of these, 115, or 17%, were upheld; 59, or 9%, were partly upheld; while 509, or 74%, were not upheld. A number of the findings directed financial service providers to restore tracker mortgages to complainants. In addition, 311 complaints about tracker mortgage interest rates have been resolved through the acceptance of settlement offers made by financial service providers after engagement with the office.

We have 540 open tracker mortgage complaints. The remaining 304 were either out of jurisdiction or withdrawn. However, as a result of the recent legislative changes made by the Oireachtas, some of these complaints may now come within my jurisdiction and in those circumstances we are ready to accept complaints from consumers.

PTSB appealed four of the Financial Services Ombudsman's 2011 decisions to the High Court. The decisions had directed the bank to return customers to their tracker mortgages. They were linked and dealt with by Mr. Justice Hogan in a single High Court case. He delivered his decision in August 2012, one year after the FSO decisions had been issued. He affirmed two of the four decisions and remitted the other two to the FSO for further consideration. PTSB appealed the two cases that had been affirmed by the High Court to the Supreme Court. While the appeals were ongoing, for one year in the High Court and over two further years in the Supreme Court, all PTSB tracker mortgage complaints were put on hold by the FSO. The office kept in regular contact with the complainants while their complaints were on hold. In February 2015, almost four years after the original FSO decisions, PTSB withdrew its Supreme Court appeal which had been listed for hearing some days later. By February 2015 the Central Bank had commenced an enforcement investigation action with PTSB and the PTSB tracker mortgage redress programme was put in place.

Shortly after I took office in April 2015, it became evident to me that the loss of tracker mortgages for certain people who had wrongly been denied tracker mortgages had the potential to cause serious hardship for them. It was also clear to me that the FSO would have a key role in solving the problem, both for individual borrowers who would bring complaints to the office and larger groups of borrowers through co-operation with the Central Bank of Ireland. Because of this, I have invested considerable time and resources in the past two years in assembling the data available within the my office on tracker mortgage complaints and working in close co-operation with the Central Bank to ensure consumers wrongly denied tracker mortgages would have them returned in the most efficient and effective way possible. I was aware that my office had built up a considerable body of information on tracker mortgages. However, this information was contained in hundreds of individual complaint files. Realising how valuable the information contained in these files could be, I decided to undertake an analysis of tracker mortgage complaints decided by the office between 2009 and July 2015. The aim of the analysis which considered 437 files in which findings had issued during that period was initially to inform me of the issues concerned. However, it became evident at an early stage of the analysis that the information would also be useful to the Central Bank in its broader regulatory and enforcement

role. For that reason, I engaged with it to establish what information would be of assistance to it. As a result of this interaction, the objective of my analysis was broadened in order to inform the Central Bank of the various issues the FSO had encountered in dealing with tracker mortgage complaints.

I worked in close co-operation with the Central Bank, in line with the memorandum of understanding in place with it, and presented the findings of my analysis to it in November 2015. I believe the information was of assistance to it in scoping its current industry-wide examination of tracker mortgage related issues which it directed lenders to complete. The information gleaned from the analysis which was provided for the Central Bank included the following: the various triggers which had caused complainants to transfer from or lose their tracker interest rates; the various reasons provided by the financial service providers for the failure or refusal to allow the complainants to move or revert to a tracker interest rate; details of the instructions signed by complainants on transferring between rates; the various contractual conditions relied on by the financial service providers; and details of relevant conditions included in loan offer letters. The objective of the examination directed by the Central Bank is to ensure lenders conduct a complete review of their mortgage loan books to assess compliance with both contractual and regulatory requirements relating to tracker mortgages. In situations where customer detriment is identified from the examination, banks are expected to provide appropriate redress and compensation in line with the Central Bank's principles for redress in order to ensure fair outcomes for customers of those lenders.

In the initial stages of the examination I became aware that some banks had indicated that they would not include customers who had received decisions from the FSO in the examination. I was firmly of the view - a view shared by the Central Bank - that no mortgage holder who had made a complaint to my office should be treated any differently in the examination by virtue of having made such a complaint, irrespective of the outcome. I wrote to the CEO of each of the banks informing them of my view and asking them to confirm that no mortgage holder who had made a complaint to my office would be treated any differently in the examination by virtue of having made a complaint to the FSO, irrespective of the outcome. I received this commitment in writing from all the banks. It is my view that the most effective and efficient way to provide redress and compensation to borrowers who have been wrongly denied tracker mortgages is for the banks to co-operate fully with the Central Bank examination. For this reason, I have communicated with each complainant who currently has a tracker mortgage complaint with this office explaining why I believe that it is in their best interest to put their complaint on hold with this office pending the outcome of the examination currently being undertaken. I have worked closely with the Central Bank throughout the examination process and I will continue to work in close co-operation with it to achieve the best outcome for those wrongly denied tracker mortgages. I have carefully considered the Central Bank's October report regarding the progress of the examination. I am particularly conscious of its concern that some lenders have failed to identify impacted customers or failed to recognise that certain customers have been impacted by their failures.

When the various financial service providers have completed the Central Bank examination in respect of individual borrowers, if there are people who believe that their bank has not provided the redress and compensation that they believe they are entitled to, they can make a complaint to my office. This option may also be available, in certain circumstances, to people who have made a complaint to us in the past. The service is free and individual consumers do not require legal representation to use our service. We stand ready and able to take these complaints and we will look at each complaint on its individual merits and consider the person's

unique circumstances.

As soon as the various financial service providers complete the examination in respect of certain customers or groups of customers who have tracker-related complaints in my office, we will communicate with those complainants. Where complainants inform us that they have agreed a settlement with their financial service provider, we will close the file. Where complainants are not satisfied with an offer of redress from their financial service provider or do not receive any offer from their financial service provider, the mediation, resolution, investigation and adjudication processes of this office will be available to them. Complaints may include that the complainant did not receive a tracker rate of interest and still believe they are entitled to one, that they received a tracker rate of interest but believe the wrong margin has been applied, that they received a tracker rate of interest but believe it has been applied from the wrong date and that they believe they were not treated fairly or reasonably during the examination or appeals process. I am conscious that many of the people who have wrongly been denied tracker mortgages have been waiting a considerable length of time and may have suffered considerable hardship. For this reason, we will prioritise tracker related complaints as soon as the examination directed by the Central Bank is complete in respect of individual borrowers and groups of borrowers. We have put in place a dedicated tracker team with a dedicated telephone number 01 587 7077 and email - *tracker@fspo.ie* - to deal with people who have tracker-related enquiries and to progress tracker-related complaints.

I assure members that together with my management team and staff, I will continue to work closely with the Central Bank regarding tracker mortgages. I take this opportunity to outline our services and some of the significant powers available to me to assist in this regard. As I have pointed out, our objective is to redress the balance between an individual and their financial service provider. Our service is free to consumers and we have been making significant changes over the past two years to make the service more accessible and easier for consumers to use. We now have an informal mediation service which gives consumers the chance to be listened to and have their complaint resolved in a faster and less legalistic way. Where that does not work, we formally investigate and seek responses from the financial service provider and we thoroughly consider all of the evidence surrounding the complaint before delivering a fair and impartial decision.

In July of this year, the Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017 was enacted. This legislation extended the period within which consumers of long-term financial service products can take complaints to my office. This will allow some complainants to submit complaints to this office, including some with tracker-related complaints, which may previously have been time barred under the six-year rule. The Houses of Oireachtas have also provided me with powers that are different from the courts. I can direct compensation of up to €250,000 and I can also direct rectification, which could, for example, involve directing a financial service provider to reinstate a tracker mortgage rate or direct it to change the margin or the time from which a particular rate was applied. The legislation also provides that my decisions are appealable by way of a statutory appeal to the High Court, which means that it is my office which defends the case if a financial service provider appeals my decision to the High Court. Therefore, consumers who take a complaint to the Ombudsman do not need to worry about any financial risk if their financial service provider appeals my decision to the High Court. As Financial Services Ombudsman, I also have the power to look beyond the contractual terms and consider the fairness and reasonableness of conduct complained of. I assure the members that I will not be found wanting in using the powers the Oireachtas has given me, in an impartial manner to ensure a fair outcome in respect of complaints made to my office.

I thank the committee for the opportunity to engage with it here today. Ms Cassidy and I are happy now to deal with any questions that arise.

Ms Isolde Goggin: I thank the Chairman and members of the committee for giving us the opportunity to appear before the committee today to speak about the issue of tracker mortgages and the role of the Competition and Consumer Protection Commission, CCPC, in the context of consumer protection. My name is Isolde Goggin and I am chairperson of the CCPC. I am joined by Mr. Fergal O’Leary, who is a member of the commission. Although the Central Bank’s tracker mortgages examination is ongoing, let there be no question that it is the CCPC’s view that the way in which financial institutions have treated their customers is totally unacceptable. Consumers have been let down. Regardless of the financial crisis, consumers’ contracts should have been, and must be, honoured.

We believe that the best way for consumers to get redress is through the Central Bank’s examination and, if required, as Mr. Deering outlined, through the Financial Services Ombudsman. As demonstrated by this situation, consumer protection is particularly important in financial services where consumers are extremely vulnerable. We are happy to share our views today with the committee on these important matters.

We have been before the committee on a couple of occasions with regard to insurance and a report on options for standard variable mortgages so some members know what we do but for completeness, I will provide some detail about our work. The CCPC, which was established in October 2014, enforces competition and consumer protection legislation in all sectors of the economy so basically, everywhere a consumer buys something, competition and consumer protection legislation applies. We have 90 staff members all working towards the common purpose of protecting and increasing consumer welfare. Each year, we receive in excess of 40,000 contacts from consumers and traders. These contacts enable us to identify systemic breaches of the law across many sectors. We use general consumer protection legislation and competition law to end illegal business practices. In our three years of existence, we secured Ireland’s first conviction for bid rigging, which is a competition offence, secured the first custodial sentence in a motor vehicle crime; and opened investigations and took enforcement action across a wide range of sectors, including event ticketing, the bagged cement sector, online hotel bookings, retail and motor garages. We are currently undertaking a study of the household waste collection market in Ireland. In addition, we have launched a project on standard term contracts in residential care services for older people and have stopped thousands of unsafe consumer products from entering the Irish market. That is the big picture regarding what we do across the economy.

With regard to financial services, our primary statutory role with regard to financial services involves education and information. Informed consumers are a vital component in an active market, particularly given the increasing choice and complexity of financial services products. As part of its mandate, the CCPC runs numerous public awareness campaigns and has developed specific online tools to help consumers assess their mortgage rate and compare other products, including savings and current accounts. Our website annually receives over 1.6 million visits and the price comparison tools I have outlined are the most frequently visited pages.

In addition to this specific statutory remit, our efforts in the financial services area are particularly focused on where we believe there are gaps in consumer protection, for example, PCP car finance, at which we are looking, or where we believe an external perspective can be helpful to develop policy. An example here is our mortgage options paper, which we discussed with the committee earlier this year. With regard to competition enforcement, the committee will

also be aware that we have an open investigation into potential price signalling in the insurance sector. The European Commission also has an open investigation into a different aspect of the sector which the CCPC supported by making our staff available to assist with local searches.

We also operate a consumer help line and through that, receive information from consumers regarding issues they are experiencing across the economy, including financial services. We share this information with the Central Bank so that it can take further action as necessary. Out of the 131,000 calls and emails we have received from consumers since we were established, 153 related to the scope of the Central Bank's tracker mortgage examination. The Financial Services Ombudsman would have received many more contacts of this nature, as would be expected. As is the case with all consumer contacts we receive relating to financial services, those who contacted us were given information to help them take the next steps to address their problem and the information we obtained through these contacts was provided in summary reports to the Central Bank.

In terms of consumer protection in financial services, the primary objective of consumer protection law is to prevent consumers from being exploited, either in the sales process or by the nature of the product or service that they buy. There is an important distinction between the CCPC's powers and those of sectoral regulators, both in Ireland and other jurisdictions. Many sectoral regulators have legislative powers to develop industry-specific rules to prevent issues from occurring. In other words, they are not going after something that has already happened but are trying to prevent it from occurring in the first place. Many also have the power to impose fines directly when breaches occur and to compel firms to compensate consumers.

In financial services, consumers are particularly at risk. Products can be very complex and there is a significant information imbalance between the consumer and the seller and the potential for consumer detriment is high. This means it is essential that consumers are protected by legislation and regulatory systems that reflect the characteristics of the market. It is also essential that there is robust enforcement with significant implications for traders who exploit consumers, both in terms of their reputation and financially.

The Central Bank and the CCPC both have powers under the Consumer Protection Act 2007. In addition to this Act, the Central Bank as the sectoral regulator also has a broad suite of sector-specific legislative powers, which empowers it to introduce codes of conduct, fitness and probity rules and so forth. The Central Bank's tracker mortgage examination is assessing compliance with the code of practice for credit institutions, the Central Bank's consumer protection code, the code of conduct on mortgage arrears and the Consumer Protection Act. The Central Bank's ability to compel compensation for consumers, in addition to the presence of the Financial Services Ombudsman's Bureau, is vital in ensuring that when financial services firms break the rules, consumers are financially compensated. The Central Bank also has the power to directly fine firms for serious breaches of regulations, a power which the CCPC does not have.

In the context of the Central Bank's tracker mortgages examination, as I have already said, consumers of financial services are vulnerable at the best of times. However, difficulties with a mortgage can have a devastating effect on families. We are aware that it has been suggested that banks were operating as part of a cartel and that they agreed together to deny their customers access to tracker mortgages. Through our relationships with the Department of Finance, the Central Bank and the Financial Services Ombudsman, we have closely followed the steps being taken and the scope of the Central Bank examination. There are formal structures between the CCPC and the Central Bank, which compel the Central Bank to inform the CCPC of any

information that may indicate a potential breach of competition law. I can advise the committee that no such report has been made; nor have we uncovered through our own market surveillance any information to allow us to open a criminal investigation. We cannot stress enough how important it is for any individual who has information of criminal behaviour, including cartel behaviour, to bring this information to us and we will take appropriate action. Notwithstanding this, there can be no question but that consumers have been badly let down and exploited. It is conceivable that consumers have been the casualty of opportunistic behaviour within the market as it would appear that each of the banks made a decision that was in their financial interests but which was extremely detrimental to the customers involved. This form of conduct should not and cannot be tolerated. What is most concerning is the apparent lack of a culture of compliance, which appears to be deeply ingrained in the financial services industry. This is despite the radical changes made in the boards and management teams in the post-crisis era.

Finally, the CCPC firmly believes that for consumers to be adequately protected in this sector, there must be strong legislation, vigorous enforcement and well-informed consumers. At the end of this process consumers should be fully compensated, providers held to account and measures put in place to ensure that consumers are adequately protected in all financial services products. We believe the immediate priority must be reimbursing and compensating consumers as quickly as possible. In this regard, we share the frustrations of many that this process has been slow. We are particularly disappointed in the lack of concern and slow response from the industry and in the apparent resistance from the lenders reported by the Central Bank. Compensating consumers should not be the end of the matter. It is vital that the Central Bank's final report clearly explains exactly what occurred in each financial institution that led to consumers being treated so badly and that appropriate enforcement action is taken to address breaches to ensure accountability and drive a culture of compliance. Crucially, we believe that this clarity and accountability is essential in ensuring that consumers of financial services are never mistreated in such a manner again.

Chairman: Thank you Ms Goggin. Deputy Doherty is first.

Deputy Pearse Doherty: Go raibh maith agat. I dtús báire, ba mhaith liom fáilte a chur roimh na finnéithe chuig an gcoiste. Baineann an chéad cheist atá agam don CCPC leis an bhfiosrúchán. My first question is for the CCPC regarding the investigation that is under way into possible price fixing in the insurance market. I ask Ms Goggin to update the committee on the progress of that investigation and to clarify whether it is a criminal investigation.

Ms Isolde Goggin: We are making a lot of progress on the motor insurance investigation. We appeared before the committee previously and at that time we hoped to have the investigation completed this year. However, the more we looked into it, the more there was to be examined. So far we have held 47 witness summons hearings. We have obtained over 1.24 million emails and documents from parties under investigation. Whether the investigation takes the civil or criminal route will depend on what turns up. We would not make an announcement on that in advance of completing the investigation and finding all of the information there is to find. At present, we are in the middle of the investigation. We are finding a lot that prompts us to go looking again. We hope to conclude it within the next year.

Deputy Pearse Doherty: I ask Ms Goggin to tell the committee what was the trigger for the CCPC to initiate that investigation.

Ms Isolde Goggin: There are a number of different possibilities. It might be something that is reported in the media. This is particularly the case with regard to an investigation into

price signalling. By its nature, price signalling is out there and is in the public domain. It is something that can be picked up from media, with people saying there needs to be an increase of X% in this industry over the next year, for example. If people are acting on that then, it is something that can be picked up through market intelligence and surveillance. We can pick things up through complaints.

In terms of criminal investigations, one is looking at ending up in the Central Criminal Court on a cartel offence and in that context, one's best evidence is informant evidence. We are talking about an immunity applicant, that is, somebody who was there and who can swear up to what happened, whether meetings were held and whether agreement was reached. It is somebody who can provide names, locations, dates of meetings and so on. The problem with that is that if a person has been present at all of those meetings, it is very likely that he or she has also committed a criminal offence. That is why we have introduced a cartel immunity programme in conjunction with the Director of Public Prosecutions. Under that programme, persons who have been part of a cartel and have engaged in behaviour that could be regarded as criminal can come forward to us, apply for immunity and on the basis that they give us evidence and fully cooperate with the inquiry, we can ask the Director of Public Prosecutions, DPP, not to prosecute them and to use their evidence in the criminal cartel case.

Next we would look at whistleblower evidence. By whistleblower, I mean someone who has information but who was not necessarily a part of the cartel. Again, it is somebody who could give one specific information as to names, dates and exactly what form of behaviour occurred. That kind of information is what one can use to ground a warrant.

Deputy Pearse Doherty: That is general rather than specifically related to this investigation. I was asking what the trigger was for this investigation.

Ms Isolde Goggin: The insurance investigation?

Deputy Pearse Doherty: Yes.

Ms Isolde Goggin: I would prefer not to speak about that at this stage.

Deputy Pearse Doherty: That is fair enough. The reason I asked is because Ms Goggin said in her opening statement that the CCPC does not have any information to open a criminal investigation. I presume the CCPC does not have to open a criminal investigation. It can open one similar to that being undertaken with regard to the insurance industry. The CCPC is an organisation which is tasked with upholding competition and consumer protection. It is now undisputed that the 11 financial institutions that were involved in the mortgage market here and involved in the sale of tracker mortgages either took from or denied their customers tracker mortgages or applied the wrong rates. We know that somewhere in the region of 30,000 customers were affected and that the sum of money involved is up to €1 billion. Was there no wee suspicion within the Competition and Consumer Protection Commission that there might be a bit of uncompetitive practice in this regard, given that every single one of them that is involved in any substantial way with the sale of tracker mortgages has done nearly exactly the same thing?

Ms Isolde Goggin: I will first address the criminal versus civil issue. In the case of a flat-out cartel, that is, a price fixing, market sharing or bid-rigging cartel in which people sat down in a room and said they would get together and make a specific agreement to cheat their customers, we would always regard that as a criminal matter. The issue with civil cases is there are no

finer. We do not have civil fines in Ireland. We do not have the power the Central Bank, for example, has to fine entities, which it authorises, because they operate within a regulated sector. We always regard flat-out cartel activity as being so serious that we want to take the criminal route, we want to get it into the Central Criminal Court and we want fines and penalties on individuals, as well as on the company. The problem with this is one must be extremely careful about how one gets the evidence. Without pointing the finger, we have seen what happens when public agencies cut corners in carrying out a criminal investigation. We are not going there. We have recruited a serious, professional, criminal investigation division. We have a serving detective sergeant from the Garda national economic crime bureau. We have recruited experienced professional investigators from the ranks of retired gardaí and from members of other police forces. We are going down that route. In looking to use our search powers, it would mean going before a judge to get a search warrant, where we would need to be able to explain to the judge the reasons for looking for a search warrant for a particular institution for a particular type of behaviour. We cannot go on a fishing expedition; we would be thrown out of court. It may be two years down the road but we must think about that.

Looking at the behaviour of the banks, it is undoubtedly the case that they all started to withdraw tracker mortgages at the same time. It is also undoubtedly the case that they were losing their shirts on tracker mortgages, each and every one of them. During the period when the banks entered into tracker mortgages they assumed they would be able to borrow at or close to the European Central Bank base rate the whole time. The rate at which the banks were borrowing suddenly switched and they were not able to borrow at that rate any more. Looking at the situation on an individual basis, it was absolutely in each bank's interest to get people off tracker mortgages. Unfortunately this is what prompted a lot of what appears to have been highly unscrupulous behaviour. Without more, however, we cannot search for evidence on the basis that the banks did something that was clearly in their own financial interests to do, and which they had very good reasons to do. There were bad reasons in how they went about it but to request a grant of a warrant we would need something more than the fact that each bank did something in their own economic interest at that point.

Deputy Pearse Doherty: I know my colleagues will pick up on that point but I will leave Ms Goggin with this comment; I argue that every cartel acts in its own economic interest. I have never heard of a cartel that acted against its economic interest. I do not believe that Ms Goggin's points hold up. She can answer that.

I want to move on to the Financial Services Ombudsman's Bureau and a number of cases in particular. It is worth saying that Mr. Deering was not in office at the time pertaining to the questions I am about to ask. Findings were made in a number of cases that were rejected by the Financial Services Ombudsman and figures have been presented to the effect that 74% of cases were rejected. How many of the cases have now been discovered to have been within scope and should therefore not have been rejected or in which there were issues regarding banks denying their customers tracker mortgages?

Mr. Ger Deering: A small number so far have been discovered in one particular bank but many people do not have the final answer as to whether they are impacted. Anybody who had a tracker mortgage at any stage would have been within scope but the issue is whether they were impacted by the measures. In one bank, so far, a small number of people have been identified as having been impacted also.

Deputy Pearse Doherty: The Financial Services Ombudsman's Bureau should have the final figures by now, given that phase 2 is complete within the banks.

Mr. Ger Deering: We do not have that for individuals.

Deputy Pearse Doherty: Of the 509 cases that the Financial Services Ombudsman's Bureau rejected, how many were impacted?

Mr. Ger Deering: At this stage it is only three cases.

Deputy Pearse Doherty: Only three. Does Mr. Deering know how many cases were not impacted?

Mr. Ger Deering: We do not know that because until the process ends, we will not have a definite answer in respect of each complaint.

Deputy Pearse Doherty: So all 509 cases could have been impacted but the Financial Services Ombudsman just does not have the information yet.

Mr. Ger Deering: It is unlikely they could all have been impacted. Some of the complaints we have received are from people who never had a tracker mortgage. Not everyone who has made a complaint to our office has had a tracker mortgage, even at any stage. Some people, for example, have made complaints that they were never offered a tracker mortgage and they would have liked to have one. They are unlikely to be within scope or to have been impacted in the banks.

Deputy Pearse Doherty: I am actually quite surprised that while 509 cases have been rejected by the Financial Services Ombudsman, the office is not aware of how many of the cases have been impacted or not. These banks have concluded and all the numbers are there at this stage. Either the Financial Services Ombudsman is not getting the figures from the institutions or from the Central Bank - which has these details also - or the institutions are not providing the figures to the Financial Services Ombudsman. I know that certain banks are still going through the process, but how can it be a couple of weeks after the final figures and there is still this lapse between the financial institutions and the Financial Services Ombudsman Bureau?

Mr. Ger Deering: We are in constant contact with complainants and the financial service providers. It is simply that with the cases outstanding at the moment we have not got confirmation from the banks as to whether they are impacted.

Deputy Pearse Doherty: I do not know which bank it might be but let me, hypothetically, take AIB. I am not singling it out, it just came into my mind. Let us say that of the 509 cases, some 100 were AIB customers and that AIB has concluded its phase 2. Has the Financial Services Ombudsman written to AIB to say "We have rejected these 100 customers in the past, we understand that we are part of your examination, can you inform us if these customers are impacted or not?" Has this been done?

Mr. Ger Deering: No. I wrote to all the banks to inform them that I expected the banks to include all those cases. As I said in my opening statement, at the outset of this issue I became aware from complainants who had contacted me that some banks had told complainants that they would not be included as they had had a decision from the ombudsman. I wrote to the banks, I worked on it with the Central Bank to ensure this changed, and all of those people have now been included. We get information from the banks on live complaints. It is generally only when the complaint is closed that the complainant comes back to us and informs us that they got a different outcome. Even on the live complaints we have not got answers. We are asking but we have not got answers from the banks to say these people are actually impacted. We get

the answer to whether or not they are in scope but not-----

Deputy Pearse Doherty: Is the Financial Services Ombudsman not asking for information on the rejected complaints?

Mr. Ger Deering: No we have not been.

Deputy Pearse Doherty: Mr. Deering knows of three such complaints.

Mr. Ger Deering: I am aware of three cases that came back to us, yes.

Deputy Pearse Doherty: The point I have made - and I have made it before at a previous committee - is that the Financial Services Ombudsman has rejected 74% of the claims, where it had made findings, on tracker mortgages. I have not seen the files. I imagine that some of the claims would probably not have been upheld. I would bet my house that the Financial Services Ombudsman Bureau made serious errors on claims. I would do this because I know individuals who were tortured financially because the banks used information that was based on decisions that were made by the Financial Services Ombudsman. The banks were able to waive these decisions of the Financial Services Ombudsman, only to find out as a result of the Central Bank tracker mortgage investigation that they were right all along, the bank was wrong and the Financial Services Ombudsman was wrong. I am not saying this personally to Mr. Deering because I am aware that he was not in the office at the time, and I know that the staff at the time were trying to do their best, but they made wrong decisions over and over again. They added to the difficulty and they gave a safety blanket to the banks in respect of the financial torture the banks put their customers through. There is a responsibility to deal not just with the live cases, but all of the cases that were rejected by the Financial Services Ombudsman Bureau to review them to find out why the cases were rejected, if they were rejected inappropriately and what lessons can be learned in the future. If there is a case, and I believe there is, the Financial Services Ombudsman needs to apologise to those customers for failing them as an organ of the State which was supposed to protect them. There is a duty on the organisation to do that. One bank refused to deal with any of the cases adjudicated by the ombudsman and I commend it on ensuring that happened, but it has a responsibility to the customers it has failed.

Mr. Ger Deering: In the case of people who obtained a decision from the ombudsman and are now included, I accept that should not have happened. I will apologise if that has been a fault of our office. It is fair to point out that a number of things have changed. For example, the Deputy's Private Members' Bill allows us look at certain cases. A number of tracker mortgage complaints had been only partly examined because the sale of the product was the critical factor. We needed to determine what people were told when they were sold a product, but we could not do so at the time under the six-year rule. That piece of information would have been very relevant or could have influenced the decisions in a different manner.

Recently, additional evidence was brought to my attention regarding a complaint the office had decided on. When I received the additional information, it appeared to me to be material and would have made a difference if it had been available to the ombudsman at the time the decision was made. I contacted the provider and asked for an explanation. I was not happy with what I was told and I went to the High Court and asked that the finding be quashed. I know the Deputy knows this, but it is worth recording that I cannot review or change a previous decision of the office. I cannot re-examine an issue which has been decided because the decisions are legally binding.

In a case where evidence became available, I went back to the High Courts to have the finding quashed and the case returned to the office for a second decision. I will take whatever action is appropriate. I have spoken to the people I mentioned about the fact that they got a different outcome, and I agreed to meet them and apologise. If there are others in that position I will meet them.

Deputy Pearse Doherty: There are two major issues. Customers have to be put back on tracker rates but there is also the issue of compensation and redress, as well as the debate around the prevailing rate. Mr. Deering is aware of the level of compensation the banks are offering their customers. There are individual circumstances, but the system is based around a standard formula. Has the level of compensation for cases which have been upheld by the ombudsman before the tracker examination by the ombudsman been higher, lower or in the same ballpark?

Mr. Ger Deering: It probably would have been lower because at the time the decisions were coming pretty quickly. There is a significant difference if somebody is put back on a tracker rate within a year. It is still wrong, but that is very different to the length of time people have to wait now. I do not think we are comparing like with like. My impression is that the compensation was less, but issues were rectified more quickly.

Deputy Pearse Doherty: Have the individuals who have been offered compensation and redress by a financial institution who rejected it or who have not been satisfied by the figures appealed to the ombudsman? Has it made any determination on such cases? Can Mr. Deering inform us as to whether the compensation has been higher in those cases?

Mr. Ger Deering: We are not at that stage yet. Any of the complainants who have complaints with us have not been through the appeals process. We are waiting until they have exhausted the process before making decisions on the appeals process.

Deputy Pearse Doherty: I brought to the attention of the Central Bank and the Minister for Finance a policy which was at the heart of Bank of Ireland, whereby in the case of mortgages for non-PDHs which required restructuring and the mortgage in question was a tracker mortgage an automatic 1% was added to the tracker interest rate. I have been informed that is completely against the spirit of the law. What is the view of the ombudsman on something being a policy rather than an individual assessment of a mortgage and whether this beneficial or not to the customer? Are cases where a restructured non-PDH tracker mortgage had 1% added to the rate in keeping with-----

Mr. Ger Deering: The Deputy will appreciate that I will answer the question in general terms; I cannot comment on a particular bank. I answered his last question in general terms. One of the codes set out by the Central Bank is that one cannot use a change in a tracker mortgage to come to an agreement with a consumer who is having difficulty paying. I would look at the merits of each case. What the Deputy has outlined sounds wrong on the face of it. I am not commenting on the bank. Rather, I am saying that where people lost trackers or had their tracker mortgages changed in some way related to the fact that they were having difficulties paying their mortgages would appear to me to be wrong.

Additional information is now becoming available, in particular through the Central Bank examination, which was not available when previous decisions were made. That is an important point. As Deputies know, one case went to the High Court and it was only then that additional evidence became available. Part of the difficulty at the time of the original investigation was that the information which should have been given was not given.

Deputy Pearse Doherty: The banks were lying to the ombudsman.

Mr. Ger Deering: They were not giving the information which they should have produced in the evidence.

Deputy John Deasy: Mr. Deering mentioned the Central Bank and Financial Services Authority of Ireland (Amendment) Act which was enacted in July. I am interested in finding out how effective the legislation has been and how the office has utilised the new powers given to it under the Act. He mentioned that it extends the period during which consumers can take complaints to the office, and allows the office to direct compensation of up to €250,000 and the reinstatement of a tracker rate. Can Mr. Deering tell me, in each of the categories he mentioned, how many times he has used the new powers granted to his office under the new Act? Admittedly, there has been a relatively short time between the enactment and now.

Mr. Ger Deering: The awards of €250,000 I can direct in compensation and rectification were in the original legislation. The new Act increased the time limit from six years for long-term financial services products. We have received a lot of inquiries and people who had existing complaints with us had their cases re-examined. When a complaint was received we told a customer we could look at one aspect but not that which covered more than six years. We have reviewed all of the live files we have to determine where the Act allows us to go back and bring in something which was not covered before.

Deputy John Deasy: How many complainants who were time-barred under the six-year rule have made fresh complaints or contacted the office?

Mr. Ger Deering: Only a small number. The number of complaints has increased. By the end of this year we will have received 500 more complaints than we did last year. They are a combination of the tracker mortgage issue and the extension of the six-year rule. In some cases, the two issues are the same. I might ask the deputy ombudsman to say something about that.

Ms Elaine Cassidy: About 100 cases are affected by the six-year extension.

Deputy John Deasy: Okay. About 100.

Mr. Ger Deering: They are mainly new cases. We are going back over some existing complaints. One element which was out of scope has now come back into scope.

Deputy John Deasy: Have any appeals to the High Court been made by service providers which the ombudsman finds itself defending?

Mr. Ger Deering: Yes. Since the ombudsman scheme was set up that has been a feature of the system in which we operate. Earlier, there was criticism of the office for perhaps not doing enough. The office directed banks to put complainants and customers back on tracker rates and that was appealed to the High Court. It was then appealed to the Supreme Court. Those were the conditions under which the office was operating at the time. The answer to the Deputy's question is that providers appeal our decisions to the High Court.

Ms Elaine Cassidy: It is probably worth pointing out that it would be considerably less at the moment because such a large number now go through our mediation service and they would not end up getting appealed.

Mr. Ger Deering: Sometimes, people think that if it goes to the High Court, the complainant or the customer is in some way at risk. That is not the case. If a provider appeals my deci-

sions to the High Court, I will defend that decision so the cost is on the Financial Services Ombudsman Bureau. The complainant becomes a notice party so he or she is not at risk of costs.

Senator Kieran O'Donnell: I welcome the witnesses. Will Mr. Deering clarify a couple of points? Am I correct in saying that there are 540 open tracker complaints and 304 others, so 844 in total?

Mr. Ger Deering: Some 540 are open. The 311 have actually been settled.

Senator Kieran O'Donnell: It is 304.

Mr. Ger Deering: It is 304, sorry. They have been settled so they will be closed so there are 540 live or open tracker complaints.

Senator Kieran O'Donnell: Has Mr. Deering sat down with the Central Bank to discuss those files?

Mr. Ger Deering: No, because I am independent in my function so it would not be correct for me to discuss a particular complaint file but what I have done, which I think has been of significant benefit to the Central Bank, is the analysis of a significant number of the closed complaints. Out of that, I was able to give information to the Central Bank about the various triggers and issues.

Senator Kieran O'Donnell: Of the current 540, only three have been impacted. Am I correct?

Mr. Ger Deering: The three that I was giving an answer to Deputy Doherty about were earlier and were closed. Of the 540 at the moment, the information back from the banks is that approximately 80 are in scope.

Senator Kieran O'Donnell: Is that directly from the banks? The Central Bank is carrying out an investigation at the moment. It seems unusual that two institutions of the State that are doing the same work and ultimately want to get the best result for the consumer are doing it separately. The Central Bank is effectively carrying out a trawl of the banks with regard to the cohort of people who are impacted by trackers. Of that 540, Mr. Deering's understanding from the Central Bank is that only 80 of those are deemed to be in that cohort. Is that correct?

Mr. Ger Deering: That is correct but we are not at the end of the process. We have not got answers for many of the other people so it may stay at that number or that may expand.

Senator Kieran O'Donnell: Does Mr. Deering deem those 540 to be genuine tracker complaints?

Mr. Ger Deering: Yes, they are tracker complaints.

Senator Kieran O'Donnell: Therefore, why do we have a contradiction whereby one could make the case, if Mr. Deering is saying that only 80 of the 540 are in scope, a very small proportion, about one seventh, that it is possible that the trawl being done by the Central Bank is not comprehensive enough?

Mr. Ger Deering: I have no way of knowing that and could not comment but we work closely with the Central Bank and know that it is putting all the pressure it can on the banks. It has used the information we have given it.

Senator Kieran O'Donnell: Mr. Deering is saying that only 80 of the 540 are deemed to be in scope. That is a very small percentage.

Mr. Ger Deering: I cannot comment on live cases because that would prejudice the case but I can say to the Senator that I have looked carefully at many previous complaints that were not upheld. Unfortunately, as the people advocating for those affected by tracker issues will say, not everybody is entitled to a tracker mortgage.

Senator Kieran O'Donnell: In Mr. Deering's professional opinion, are all of the 540 open complaints valid tracker complaints as far as Mr. Deering is concerned?

Mr. Ger Deering: I need to clarify what the Senator means by valid.

Senator Kieran O'Donnell: How far has Mr. Deering gone in looking at those 540?

Mr. Ger Deering: We have not gone far at all. Some are more advanced than others but when the tracker examination started, we put those complaints on hold. I cannot give any indication. If the Senator means that people will get their tracker rate back when he says "genuine", that is a completely different question. By "genuine", we mean that people have a valid complaint that falls within the jurisdiction of my office. In those cases, when we take a complaint, it is a valid complaint but I could not speculate on the outcome of them.

Senator Kieran O'Donnell: Mr. Deering says his office is independent. Why has it not just continued with its investigation of these 540?

Mr. Ger Deering: I believe that the best outcome, as agreed with most of the people who are on hold, is to put those people on hold. They have an additional part of their complaint and we can look at the information that came through from the Central Bank. We can get that information from the provider and will have more and better information to make a decision. I appreciate-----

Senator Kieran O'Donnell: Could Mr. Deering not have requested that information from the banks anyway?

Mr. Ger Deering: We could but the Senator has seen the time it has taken to put the information together. I honestly believe that the best way is to allow the examination to carry on. People can even complain about the fact that they were not treated properly or did not get sufficient compensation.

Senator Kieran O'Donnell: The point I am making is that it would have been interesting if Mr. Deering had continued those 540 cases and the Central Bank had continued with its investigation. I think it would have been a checking point to ensure what the Central Bank is doing is comprehensive enough. There is a danger now, if Mr. Deering relies on what the Central Bank comes back with, that that will form the basis of his decision.

Mr. Ger Deering: I want to stress that that will not form the basis of my decision. It will be part of the evidence. We will consider all of the evidence including phone calls and everything else. There is a significant difference in having to deal with a cohort of people as it is described compared to individual complaints, which we deal with. We deal with each case on its own merits. It could be that somebody was told something different than the contractual entitlement in a telephone conversation. We look at it in its broadest sense.

Senator Kieran O'Donnell: Mr. Deering will appreciate that the matter of the trackers all

arose from an individual couple taking a case on trackers against Permanent TSB. One particular case got this whole ball rolling and brought it into the public domain. Permanent TSB eventually admitted it. One of the four witnesses before us here was from that family. They are all individual cases, not a homogeneous group. I wonder whether the Financial Services Ombudsman is making the right decision in effectively abdicating short-term responsibilities to carry out investigations, which may be a bit harsh to say. I would have liked to see the Financial Services Ombudsman continue with the investigations and letting the Central Bank do its work. I would be interested to see the differences in views they would have come up with. The biggest worry here is that we can never get to a point where we know precisely what the number is. It started out at 5,000, went to 10,000, then to 15,000. We are now looking at 20,000 or 30,000 and it could even be more. If the Financial Services Ombudsman is an independent body, could Mr. Deering not do his work independently rather than parking it until the Central Bank returns to it? That is the basis of my question.

Mr. Ger Deering: The decision to put them on hold is an independent decision and nothing to do with the Central Bank. I made the decision because I believe we will be best-placed after we have all of the information that is available to decide on the complaints. As I say, we have been asked about reopening complaints. If I make a decision now on certain complaints, that is the decision. The only other outcome then would follow an appeal to the High Court whereas if we wait and have more information from the provider, people can then complain about the process they have been through. We have people who are unhappy with the appeals process. The only reason I have made this decision is in the best interests of the complainants and having full and proper evidence and information to make those decisions.

Senator Kieran O'Donnell: Has Mr. Deering continued to receive complaints?

Mr. Ger Deering: Yes.

Senator Kieran O'Donnell: When did the figure reach 540?

Mr. Ger Deering: That is a very recent figure. It was approximately 500 a month ago.

Senator Kieran O'Donnell: How many have come in since?

Mr. Ger Deering: The 540 figure is up to last Friday.

Senator Kieran O'Donnell: How many would the bureau have got in the past month?

Mr. Ger Deering: Interestingly, there has been an increase.

Senator Kieran O'Donnell: Roughly how many does the bureau have coming in?

Mr. Ger Deering: At the moment, there could be 20 or 30 a month but it varies from month to month.

Senator Kieran O'Donnell: Does Ms Goggin believe the mortgage market in Ireland is dysfunctional?

Ms Isolde Goggin: We have looked at the market for standard variable rate mortgages and we certainly found it was dysfunctional. We would have the view that the issues that have been thrown up in regard to tracker mortgages show there is dysfunction there as well. My answer to that would be "Yes", and that is why we did the report we did and made the recommendations we made.

Senator Kieran O'Donnell: What does Ms Goggin define as a cartel, in layman's terms?

Ms Isolde Goggin: A cartel is an agreement between competitors, that is, an agreement between people at the same level of the market-----

Senator Kieran O'Donnell: Is that formal or informal?

Ms Isolde Goggin: It could be formal or informal, it could be written or verbal or it could be a tacit agreement to behave in the same way, but there has to be co-ordinated conduct in the market which means they have made an agreement, in some shape or form, to fix prices, share markets or rig bids for tenders.

Senator Kieran O'Donnell: In the current market, mortgage rates in Ireland are consistently double the EU rates. If we look at the rates being charged by all the main banks, would Ms Goggin agree they are highly consistent?

Ms Isolde Goggin: I would not totally agree. We constantly monitor the mortgage offerings of the banks and we operate this mortgage price comparison tool that people can use. We are seeing some more variation and different products coming into the market, and a couple more lenders are coming in. If anyone goes into that tool and decides to switch their mortgage, they can save quite an amount of money over the term of a mortgage. Therefore, while it is not great, it is improving.

Senator Kieran O'Donnell: Why are the banks in Ireland charging mortgage rates that are double the EU rate and why is this pretty consistent across all the main institutions?

Ms Isolde Goggin: I would put forward two explanations: first, risk; and, second, lack of competition. On risk, one has to look at what is happening in the mortgage market now in the context of what happened in the past. We had a massive housing boom and a crash. There are many non-performing loans still out there and we are still struggling through the effects of that, with repossessions and so on. People are looking at the Irish market and saying, "This is risky, so I need to price my mortgages at a premium compared to markets which have been more stable and which have not been through this boom and bust".

Senator Kieran O'Donnell: German banks have come before this committee and said they will charge ten-year fixed rates at just over 1%. If they are willing to come into the Irish market and price at that level, which is well below the EU average, how can Ms Goggin state the banks are entitled to charge such a high mortgage rate to young couples or single people looking to buy their first home?

Ms Isolde Goggin: I would say that if the German banks can do that, then I wish they would, because it is one thing to say it and another thing to do it. If they would actually come in and do that, it would shake up the market totally and would offer much better value because we would see all the other banks reacting. The point is they have not done it. That is why we made recommendations in our mortgages options paper as to how the Central Bank and the Department of Finance could make it easier for institutions to enter and could look at the red tape that may be hindering them from doing it. Nonetheless, it is the case that there is better competition in the standard variable rate mortgage market than there was a couple of years back, and customers can make savings if they switch. Again, I accept switching is an unduly difficult and protracted process.

Senator Kieran O'Donnell: Does Ms Goggin accept the mortgage rate in Ireland is high?

Ms Isolde Goggin: Yes.

Senator Kieran O'Donnell: The mortgage rate is high and is well above the EU average, and I have looked at the rates and know they are relatively consistent across the board. The first role of the Competition and Consumer Protection Commission is there in the title - it concerns competition. Surely it has a role in terms of going in and providing assurance to the consumer that there is not a cartel in operation. Why would it not carry out a review of the mortgage market to give assurance to people that a cartel is not in operation? Surely that falls within its remit in terms of consumer protection. Ms Goggin has said the market is dysfunctional. How would she define a functional market?

Ms Isolde Goggin: I would describe it very much in terms of the mortgage market we have now, where we have had a number of players leaving the market, where we have had people very reluctant to enter into the market and where we have had the banks, which are in huge financial difficulties, as we know, doing their best to push consumers off the products that are better value for them and onto the products that are worse value for them. It is a complex market and the explanation for what is wrong there, to our mind, is not that the banks all got together and decided to fix prices, it is that they are all in difficulty and they are all using all the means they can, whether it appears legitimate or not, to get out of that.

What we did in the mortgages options paper is go through a very comprehensive review of the mortgage market. We compared it with many other markets and we looked at how those markets were regulated and how competition operated within them. We made recommendations in regard to the short term and how one can take business-friendly initiatives to encourage new entrants into the market, encourage new products and try to speed up the authorisation-----

Senator Kieran O'Donnell: Therefore, Ms Goggin is categorical there is not a cartel in operation in the Irish mortgage market.

Ms Isolde Goggin: I would never in a million years be categorical that there was not a cartel operating in any sector. I would never say that about any sector. Cartels are, by nature, secret agreements-----

Senator Kieran O'Donnell: The commission's role is on competition. Ms Goggin cannot have it both ways. She either believes there is a cartel in operation or she believes there is not a cartel in operation. Which one is it?

Ms Isolde Goggin: It is neither of those. What I believe is that we have not been provided with sufficient evidence to ground a criminal investigation into the presence of a cartel. We also say there are numerous other aspects of that market that make it not work well for consumers. We have gone into those in great detail.

Senator Kieran O'Donnell: With all due respect, Ms Goggin has a remit of consumer protection and competition. She cannot sit on the fence on this one. There are consumers out there at the moment who are coming to us and we can see the mortgage rates. What was done with the trackers was disgraceful and that is being looked at by the Central Bank as we speak. However, we have a current, real-time rip-off of Irish customers in terms of the mortgage rates being charged *vis-à-vis* the European rates. In terms of providing certainty around that area to consumers and protecting their interests, surely there is an onus on Ms Goggin, as CEO of the Competition and Consumer Protection Commission, to carry out a review to ensure a cartel is not in operation.

Ms Isolde Goggin: I do not think one could ever prove a negative in that respect. We did carry out a very substantial, thorough and careful review of the mortgage market, we identified a number of areas which were not working well for consumers and we made recommendations in those respects. However, a criminal investigation has to be evidence-based. If we are in the Central Criminal Court trying to-----

Senator Kieran O'Donnell: What would the commission need in terms of *prima facie* evidence in order to take a criminal investigation?

Ms Isolde Goggin: What one needs, in a case in the Central Criminal Court, is a witness. One would need somebody who is prepared to get up in the witness box and swear up to what happened. Preferably, one wants somebody to swear up and say: "I was there. I was present at these meetings. An agreement was made. We all agreed to enter into an agreement to fix prices and share markets."

Senator Kieran O'Donnell: Has no one come forward in that regard?

Ms Isolde Goggin: No one has come forward in that regard. To an extent, I am using this occasion to make an appeal to people. Many people are still working in the banks or who formerly worked in the banks, and, if such an agreement was reached, I would expect there are people who know about it. If there was such an agreement, I would certainly appeal to people to come forward to us. Even if they themselves were involved in it to the extent that they might have committed a criminal offence, as I said, we have the immunity programme, which is for that very purpose, that is, to say to people that if they are first in the door, we will listen to their evidence and we will see if we can ground a criminal-----

Senator Kieran O'Donnell: What does an immunity programme mean to the ordinary person? If someone comes forward, such as a bank official, what immunity is provided to them? Will Ms Goggin explain that in layman's terms?

Ms Isolde Goggin: Normally, if one was a participant in a cartel and committed a criminal offence, one is liable to prosecution for that. Given that they are, by their very nature, secret arrangements, to get witness evidence it is often necessary to get it from someone who has been a part of it, that is, he or she has committed a criminal offence. In light of that, we have sat down with the Director of Public Prosecutions-----

Senator Kieran O'Donnell: In recent times?

Ms Isolde Goggin: We started this about ten years ago and then reviewed it a couple of years ago. It is kind of ongoing.

Senator Kieran O'Donnell: Will Ms Goggin outline the current position?

Ms Isolde Goggin: The current position is that in the case of a participant in a cartel who is first in the door and willing to provide us with evidence about it and co-operate with the investigation, we can ask the DPP to give that person immunity from prosecution. He or she will not be prosecuted for his or her part in the cartel. However, the *quid pro quo* is that he or she has to be prepared to give evidence against the other members.

Senator Kieran O'Donnell: Have we ever had such a case in Ireland?

Ms Isolde Goggin: We have.

Senator Kieran O'Donnell: Was that within the commission?

Ms Isolde Goggin: Yes.

Senator Kieran O'Donnell: Okay. It has happened. There is precedent.

Ms Isolde Goggin: There is precedent. There is also precedent for whistleblowers, who can also provide useful evidence. A person does not have to have been guilty to come forward with evidence. What we are looking for are nuts and bolts. We are looking for names, dates and the places things happened. If our professional criminal investigators are satisfied that they can ground a warrant on it, they can apply to a District Court judge for a warrant to search a specified location for information between specified dates relating to specified people. Without it, it is a fishing expedition. It is a trawl.

Senator Kieran O'Donnell: I have two final questions. Has anyone working in the financial services industry come forward to Mr. Deering stating that a cartel is in operation?

Mr. Ger Deering: No. No one has done that.

Senator Kieran O'Donnell: Mr. Deering said that his office has no civil powers. In terms of the Central Bank, why is that the case? If such powers were made available, what difference would it make to his office when examining potential cartels and how financial institutions operate?

Ms Isolde Goggin: We have the power to take a summary prosecution, which is a lower-level prosecution, in the District Court. We have powers to carry out an investigation and refer a file to the Director of Public Prosecutions for her to bring a criminal prosecution on indictment in the Central Criminal Court. We also have powers to apply to the High Court for declaratory and injunctive relief. If we find a practice that we feel is bad in competition terms but does not meet the criminal threshold, we would apply to the High Court. It can state that the conduct is wrong and order that the respondents must stop doing it. It can also require them to carry out certain actions to ensure that they do not do that anymore. We can apply to the High Court and undertakings can be given by those involved in the company, etc., to behave or not to behave in a certain way in future. The issue is that it changes the behaviour but there is no penalty. As a general rule, we do not have civil fines in Ireland. Therefore, any penalty has to be imposed on the basis of a criminal prosecution. This brings us into the area of the criminal burden of proof, which is beyond reasonable doubt. The burden of proof in a civil case is the balance of probabilities which is a lower burden of proof. However, there is no penalty. In specific regulated sectors, such as the financial services where there is an administrative fines regime and the Central Bank can carry out its own investigations and impose-----

Senator Kieran O'Donnell: In not having civil fines in place, are we lagging behind our counterparts in Europe?

Ms Isolde Goggin: We feel so and we have made that point. We made a submission to the Law Reform Commission, which is examining this issue. Other comparable agencies that, like ourselves, cover the whole economy rather than sectoral regulators are able to make findings on the basis of the civil burden of proof and impose fines.

Senator Kieran O'Donnell: Are competition authorities worldwide able to impose civil fines?

Ms Isolde Goggin: Nearly all of them in the EU, except for those in Estonia and, possibly, Austria.

Senator Kieran O'Donnell: As a committee, it is something we might consider.

Senator Paddy Burke: I welcome the delegation. When did the Competition and Consumer Protection Commission start to investigate whether a cartel was in operation? What triggered the suspicion in her organisation that there may well have been a cartel in place?

Ms Isolde Goggin: On what triggers it, we would look at-----

Senator Paddy Burke: What triggered it in this case? Ms Goggin said that the commission looked at whether a cartel was operating in the banks.

Ms Isolde Goggin: An investigation has not been triggered into this. I am sorry if I was not clear.

Senator Paddy Burke: Ms Goggin said the commission looked to see whether a cartel was in operation.

Ms Isolde Goggin: We looked to see what was going on in the behaviour of the banks. To take that to a further stage and use our investigative powers, we would need some kind of evidence to ground a warrant.

Senator Paddy Burke: Therefore, the commission did not look to see whether a cartel was in operation.

Ms Isolde Goggin: We cannot look without evidence to see whether there is a cartel. For example, looking at what goes on in the market, stuff that would trigger suspicions would be an unexplained price rise across the board without an underlying explanation. If the market is very transparent and everyone knows what the prices are, it would not necessarily be suspicious if the Government put the VAT rate up and everyone then put their prices up as people would still be trying to cover the costs and they would have an increased cost. On the other hand, there is bid rigging in circumstances where each bid should be secret from the other competitors. If one bid comes in at X% and everyone else comes in at exactly 10% below it, that kind of evidence would trigger suspicions.

Senator Paddy Burke: The commission did not ask any of the banks when they started changing their interest rates or their tracker rates. The commission did not do any investigation at all.

Ms Isolde Goggin: We know when the banks started changing their tracker rates. It is transparent: the interest rate the banks charge is in the public domain. The issue is that it was caused by a change in the underlying bank rate, which made the trackers unprofitable for all the banks at the same time.

Senator Paddy Burke: In other words, the commission did not investigate at all. Let us be fair about it. It carried out no investigation at all as to whether a cartel was operating in the banks.

Ms Isolde Goggin: We did not carry out a criminal investigation because we have nothing on which to ground one.

Senator Paddy Burke: Did the commission carry out any investigation?

Ms Isolde Goggin: It depends what is meant by investigation. We monitor what is going on across these sectors. For example, we knew perfectly well that there were problems in the mortgage market the whole way through. However, we cannot carry out a criminal investigation without evidence to ground investigation. It would be an abuse of process if we did.

Senator Paddy Burke: Did the commission carry out any investigation as to whether a cartel was operating in the insurance industry?

Ms Isolde Goggin: We are in the process of carrying out an investigation as to whether there are anti-competitive practices operating in the insurance industry. That is a wide definition which could include cartels. It also includes other things.

Senator Paddy Burke: Is that an ongoing investigation?

Ms Isolde Goggin: Yes.

Senator Paddy Burke: Several witnesses have attended here and spoken about how they believe cartels were operating in the insurance industry. When will the commission's investigations be concluded?

Ms Isolde Goggin: It is hard to say at the moment. As I explained earlier, we have taken many investigative steps and have a lot of information. However, the more we do, the more we find. I hope that it will conclude next year. These investigations tend to take at least two years and possibly longer because they are extremely detailed and complicated.

Senator Paddy Burke: Will the commission make any interim proposals or report on whether it believes such a thing has taken place. The consumer is being ripped off in the meantime. Ms Goggin is saying that the commission's investigation will not be concluded for another year or a year and a half but, in the meantime, the consumer is being ripped off.

Ms Isolde Goggin: Sometimes there are other levers that can be used. Since we announced the investigation, we have noticed that the insurance price rise has completely levelled off and that it has fallen in some cases. The mere announcement that one is doing it can cause a change in behaviour, which is welcome.

Senator Paddy Burke: I have no doubt about that. However, it may have further implications and we might get further reductions in the insurance industry if the commission were to say it would produce an interim report. The commission has a lot of power.

Ms Isolde Goggin: We do and we have a lot of different levers and instruments that we can use. Sometimes, if heading for court, whether civil or criminal, producing an interim report can sometimes cut across it or come in the way of it. One might be better off sticking to one's guns and carrying on with the investigation through to the end.

Senator Paddy Burke: Is this the final report?

Ms Isolde Goggin: It is not really a report. The outcome might not be a report. We compiled a report on the mortgages investigation because we thought the best way to fix the market was to make recommendations on stuff that we, the Central Bank and the ombudsman could do. If we are looking at conduct that is just confined to the industry and can be fixed by the industry, then a report might not necessarily be needed. It might end up in a High Court or criminal

court action.

Mr. Fergal O’Leary: Another investigation into the insurance sector is being carried out by the European Commission. We assisted with its searches during the summer. It has different powers to us, including the ability to fine firms, and has greater resources and, therefore, its investigation may conclude sooner than ours. If it does, that will impact on the industry.

Senator Paddy Burke: The statement provided to the committee indicates that the Competition and Consumer Protection Commission, CCPC, firmly believes that for consumers to be adequately protected in the sector there must be strong legislation, vigorous enforcement and well-informed customers. Do Ms Goggin and Mr. O’Leary believe the legislation is not strong enough? Mr. O’Leary stated that the European Commission has more resources than the CCPC. Is he suggesting the CCPC is not adequately resourced?

Mr. Fergal O’Leary: I am not suggesting that we do not have the resources to complete our insurance investigation but, rather, that the European Commission inevitably has greater resources than us, so will probably be able to conclude its investigation sooner. In terms of the legislation, we are aware that the Minister for Finance, Deputy Donohoe, has asked the Central Bank to look at the culture and behaviour of banks and to report on whether any additional consumer protection legislation is required. We support that review and would very much welcome the opportunity to contribute to it.

As regards general consumer protection legislation, we made the point in the statement that the Central Bank has the powers we have, in addition to which it has administrative fining capability and the ability to look at codes of practice and so on. In terms of consumer protection, we try to ensure that consumers have sufficient information such that they know where to go when they have a problem and we also try to shine a light on areas that have not received as much attention as others. For example, we are conducting a study on payment contract plans in motor finance and hope to publish the findings in January. That issue is worth examining from a regulatory point of view and it is possible that more consumer protection is required in that area.

Senator Paddy Burke: Mr. O’Leary is saying the CCPC is a one-stop shop that will direct consumers to the Central Bank or the Financial Services Ombudsman.

Mr. Fergal O’Leary: In terms of the financial services sector, we will direct anybody who contacts us either to the ombudsman, with which we have a very good relationship in terms of how our helplines operate, or to the Central Bank in the cases involving tracker mortgages. However, as mentioned, we have an economy-wide remit. Most people who contact us do so with questions on consumer rights in particular situations and we have been contacted in regard to every conceivable item that may be purchased in any market.

Senator Paddy Burke: There is a duplication of services. The CCPC investigates certain matters, as does the Central Bank.

Mr. Fergal O’Leary: There is no duplication. I thank the Senator for raising that very important point. We have a co-operation agreement with the Central Bank that ensures there is no duplication. Senator Kieran O’Donnell stated that two State organisations are considering the tracker examination. We do not believe a third would help, so we have a co-operation agreement with the Central Bank to ensure there is no duplication and that we are not coming onto a pitch on which there are already enough players.

Senator Paddy Burke: In regard to Mr. Deering’s office, does the ombudsman make the

final decision or is it a collective decision?

Mr. Ger Deering: Decisions are not made collectively but, rather, by the ombudsman, although I can delegate that responsibility. One person arrives at the decision.

Senator Paddy Burke: I am not asking Mr. Deering to refer specifically to his predecessor but did the same system operate at that time? Mr. Deering's predecessor made some very poor decisions relating to very vulnerable people.

Mr. Ger Deering: I cannot comment on those decisions but the system at the time was that up to four people were delegated the responsibility to make decisions.

Senator Paddy Burke: All of the information is brought in and evaluated and-----

Mr. Ger Deering: When I referenced four people, I meant that they would individually make decisions. It is not a collective or consultative process. Whoever is responsible for the file delegated to them for decision makes the decision. That could be the ombudsman or a person delegated with the task.

Senator Paddy Burke: It could be a person other than the ombudsman.

Mr. Ger Deering: It could be another person in the office.

Senator Paddy Burke: Some decisions may not have been made by Mr. Deering's predecessor but, rather, by another employee in the office of the ombudsman.

Mr. Ger Deering: The ombudsman is ultimately responsible for all decisions issued by the office but the decision-making function can be delegated. However, it remains the overall responsibility of the ombudsman.

Senator Paddy Burke: Such decision-making staff may have been responsible for some of the regrettable decisions that were made.

Mr. Ger Deering: I cannot comment on previous decisions. I am not saying those decisions were wrong because we do not know if they were. Many circumstances may emerge in the examination that were not available at the time of the initial decision. Those making decisions could only do so on the evidence available to them. Part of the problem may have been that we did not get sufficient evidence from the banks, which has been a problem from time to time. I have been strongly addressing that issue in order to ensure we get all available evidence. As I mentioned, a case involving a decision by our office was appealed to the High Court, at which stage a recording of a telephone conversation was produced by the bank. That made a significant difference and would have done so had it been available to the office during the initial consideration. We now insist on being given all relevant evidence, including recordings of phone calls.

Senator Paddy Burke: At one stage, consumers had lost confidence in the Office of the Financial Services Ombudsman and I compliment Mr. Deering on restoring it.

Mr. Ger Deering: We received 4,500 complaints this year. Some time ago, 8,000 complaints were received per year. Many good decisions have been made from which many consumers have benefitted.

Deputy Joan Burton: As regards the Competition and Consumer Protection Commission

statement, I note that the office is undertaking a study of the household waste collection market in Ireland. That is very necessary and I am glad to hear it will happen. Will it examine the wages and working conditions of employees in that industry? I do not have much experience of rural collections but in the greater Dublin area the industry seems to be in a race to the bottom in terms of working conditions for employees. One can also discern that many immigrant workers are employed in the sector in the greater Dublin area and I am very concerned as to how well advised of their employment rights they are.

The witnesses are probably aware that it can be very difficult for fire services and emergency vehicles to access some streets in Dublin because three vehicles may be heading in the same direction at the same time. Complaints in that regard have been made in city and county council areas. The study should investigate whether it would be possible to recommend a bidding system such that one company would win a tender from the county council for waste collection on narrow urban or suburban streets. I appreciate that is a tender issue but some of the current practice is very dangerous, in particular in areas with many elderly people and in which ambulances and similar vehicles cannot get through. I am glad the study is to be undertaken.

Will it also examine pricing and pricing packages? The amount of information and arbitrariness of price changes is very difficult for many consumers, in particular pensioners, for whom waste charges take up a relatively large amount of a limited pension. I have been told, and think evidence was given to another committee or Deputies in this regard, that brown bin services are not being utilised, possibly because it is easier to burn everything since the advent of the incinerator. However, that is causing a difficulty for compost businesses, in particular in rural Ireland, which are very unsure about the future of their market. What is the timeline for the study?

Mr. Fergal O’Leary: In terms of working conditions, sustainability and costs, our study will examine how well the market works from the consumer and operator points of view. The Deputy is correct there have been a huge number of issues around pay-by-weight in Dublin and nationally. What we need is a longer term view of household waste collection in terms of how it can be done efficiently while ensuring operators can have a sustainable living and pay their staff appropriately. The study is due to be completed by the end of quarter 1 and, as I said, it will examine all of the factors around costs and consumer issues. The Deputy’s point on tendering is a very important one and it will also be examined in the context of the study. The Deputy might recall the High Court case a number of years ago around tendering in this area. We believe that from at least an economic point of view we should look at what would be best in terms of the operation of this market.

Deputy Joan Burton: In regard to PCP car finance, does Mr. O’Leary know the current total number of such contracts and the value of this market?

Mr. Fergal O’Leary: I do not have the number of contracts to hand but the information is available in the office. I am happy to send on that detail to the committee after this meeting. In regard to the amount of finance outstanding, I think it is in the region of €800 million. It is important to make the point that the point of first collection of this data was our study. The study shows that this is a very big market. We are working through our report and recommendations but we do feel at this stage that there probably is a case for better regulation and more consumer protection in this area.

Deputy Joan Burton: This type of finance is extremely attractive for understandable reasons, particularly to young male drivers. That is my experience. PCP appears to be a very at-

tractive deal but that is not quite as true as the advertising would suggest. At a time when credit finance from the banks is extremely difficult to access it is an avenue which people can explore and use. I am concerned, however, about the crossover when young people are applying for mortgages in that they may end up with a riskier credit profile because they have borrowed €20,000 and so on to purchase a car. While young people are availing of this consumer financing market now further on in their lives if they have secured good jobs and they want to apply for a mortgage to purchase a house - which we all hope will happen for everybody - they may find it is a very big disadvantage that they have been involved in a PCP, particularly one that went wrong and ended acrimoniously. Does the Competition and Consumer Protection Authority offer advice on PCPs? I believe that advice is very important for young people, many of them are accumulating debt without understanding the significance of it. Many of these deals often end badly and thus result in the a person having a bad credit rating. Also, banks might tend to look less favourably on the applications for mortgages from people who have previously displayed a tendency to purchase big cars.

Chairman: The subject of this meeting is the tracker mortgage issue.

Deputy Joan Burton: I am coming to that issue.

Mr. Fergal O’Leary: Perhaps I could give a brief response to the Deputy’s questions. We do give information to consumers. One of the biggest public awareness campaigns we ran over the last few years was around information provision to consumers. We believe there are issues around consumer understanding. The Deputy is correct that there are very attractive products out there. We want to ensure, through our public awareness campaigns, that people consider all of the implications, including credit history, access to mortgages and so on. In terms of the study, what we are trying to figure out is what is the most appropriate regulatory framework to ensure that consumers are protected in this market. We hope to complete that study in the next couple of months.

Deputy Joan Burton: The third consumer credit issue was raised by Senator Paddy Burke. If one were to randomly ask young staff around this building for their view of car insurance universally that view would be that people are being fleeced and robbed. In terms of the cost of insurance in other jurisdictions close to us their outrage grows. Insurance costs here are extraordinarily high, although the companies are saying that costs are now levelling. I am not sure if the Chairman is aware of it but people who are renting - which is the case for many people now - are being charged very high fees by the insurance companies in respect of a change of address. The administration fee for this was previously approximately €20 but I am constantly hearing now that this fee has increased to €50 or more, which is an outrage in terms, particularly, of people who are renting. It is one of the hidden costs of renting. Has the CCPC reviewed the fee structures associated with insurance, which, as I said, are now very heavy and may be one the reasons the insurance bill has grown and become so inflated?

Mr. Fergal O’Leary: There are a lot of issues in the insurance sector, which I know the committee has examined in detail. The Minister for Housing, Planning and Local Government, Deputy Murphy, when Minister of State at the Department of Finance set up the cost of insurance working group, into which we had an input. We are currently focused on the price signalling investigation issue in the insurance sector. Our resources are appropriately devoted to try to ensure that some of the practices in this regard are not continued. There are a lot of other issues in this area.

Deputy Joan Burton: I have noted the points made by the Ombudsman and Mr. O’Leary

on the tracker mortgage issue. Does the CCPC have the power to question the banks collectively in regard to the alignment of much of their practices or does it have to deal with each of them directly?

Mr. Fergal O’Leary: We would encourage the banks not to meet collectively.

Deputy Joan Burton: My question was if the CCPC meets with the banks collectively.

Mr. Fergal O’Leary: No, we do not meet them collectively. This issue was raised earlier by Deputy Doherty. I would like to clarify the position for the record. The Central Bank is the sectoral regulator in this sector. If the Central Bank comes across any information which it believes is evidence of a cartel or cartel-like behaviour it has a responsibility under section 33AK of the Central Bank Act to inform the Competition and Consumer Protection Commission of it. The Central Bank has been reviewing tracker mortgages dating back six or seven years. If it has uncovered any information that would suggest there is collusion or cartel-like behaviour they have a responsibility to give that to us. We met representatives of the Central Bank earlier this year. Our director of criminal enforcement and director of legal services met them to talk about the tracker mortgage examination. At that stage, the Central Bank could not give us any evidence that we could take forward. As Ms Goggin said, they did not give us information that would trigger the opening of an investigation. However, as she also said, the position is kept under continuous review. We have trained investigators who are highly skilled and motivated and if we find any actionable evidence that we can use, we will take it forward. We can give that commitment today.

Deputy Joan Burton: On how the banks deal with those in arrears, does Mr. O’Leary think the codes of conduct in place in that regard are strong enough? Does the ombudsman’s office have oversight in that regard or is it necessary to make a complaint? A lot of this work is outsourced to service companies, either within or outside bank organisations. Part of the difficulty is that, having made an agreement for a period of time and despite paying and keeping to it, the moment it is up people are back under the threat of having their house repossessed. Even those who go to jail get time off for good behaviour, but if someone reaches a deal with a bank, it is a different story. This seems to be routine across the sector, although it is particularly strong in some institutions, and it is really difficult for some to deal with.

Mr. Fergal O’Leary: There is no doubt that it is. We have also received calls from and had contact with people who have been caused great distress. Specifically, we do not have an oversight role in dealing with the issue of mortgage arrears, but we make sure any information given to us by a consumer who contacts us about his or her treatment is passed on, without names and addresses because of data protection issues. The information is included in summary reports we provide for the Central Bank. We try to make sure that if we see a practice taking place in an institution or across the sector, we pass on the information to the Central Bank.

Deputy Joan Burton: Let me ask the same question of Mr. Deering. Is there a collective sense in that regard? A lot of the work is outsourced either within or outside an institution and the practices seem to be the same. Effectively, people are paying, say, three quarters of the mortgage. They have a deal whereby part of it is parked. Very often we are talking about couples, one or both of whom may be working. They are not necessarily tracker mortgage issues *per se*. Some are, while some are not. The people involved feel that every time they reach the end of an agreement which is often for just one year, they are under threat again and the whole thing starts all over again.

Mr. Ger Deering: We look at the mortgage arrears resolution programme and the code of conduct on mortgage arrears.

Deputy Joan Burton: Loans do perform under it.

Mr. Ger Deering: Indeed. Changes have been made and there is evidence to that effect. The Central Bank looked at cases where people had been given time to repay their debt. What we look at in that process, if we receive a complaint, is how the bank has treated the customer and whether it has applied the various elements of the code.

The Deputy also asked if we met the banks collectively. In our case, we do because we are in a different position and prefer to meet them collectively rather than individually. We mainly meet the people who deal with complaints. For example, we are meeting them tomorrow through the Banking and Payments Federation. We talk to them about the level of engagement and find that some financial institutions are better than others at engaging. Some engage with us and are anxious to solve problems, while others are not and simply push us all the time to the limits of our powers. The difficulty in that regard is that it takes much longer to complete the process. If a bank approaches a complaint in a legalistic way, it will take a lot longer to deal with it. We have to investigate and adjudicate it, which takes a lot of time.

Last year we established a new mediation process. Many complainants much prefer to mediate their complaint rather than go through an investigation and adjudication process. We manage to resolve 75% of complaints, but not all providers are engaging. No later than tomorrow, I will be talking to providers about the need to engage fully in the process and the consequences of not doing so.

Deputy Joan Burton: Is there an argument to be made, for instance, that once somebody has completed a year of a mortgage arrears resolution process, MARP, is in employment and paying a sustainable amount and intends to continue to do so, the regulations or even the legislation might need to be changed to extend the period of the process for him or her? We have cases that are very difficult, in which the people involved have done their best and achieved what they said they would. They are not going to be able to pay off large blocks of the arrears because they do not have the resources to do so. Is there a need to examine the MARP period? By all means, having a shorter, one-year, period is fine, but once people have successfully completed it and are in a clear position to sustain an arrangement, should the period not be reviewed?

Mr. Ger Deering: We would certainly like to see a reasonable approach being taken to it, particularly if the circumstances of a person have not changed during the period. There is no need for the process to be too arduous, but the banks are entitled to consider whether the person's income has changed. For example, if it has improved significantly, there might be a need to look at the agreement again. The scenario outlined by the Deputy is one we see often, in which a person's circumstances have not changed. It is an arduous process to have to go through. Equally, if the banks approach the matter in a humane way and examine a person's circumstances and how they have changed - the codes in place are good in that regard and require the banks to look at all income - our role is to determine whether the banks took into account, for example, additional costs associated with children with special needs or a very difficult commute. We are most anxious that they do not apply a one-size-fits-all approach but look at all of an individual's circumstances. If they are doing this and a person's circumstances have not changed much, the process should be easy enough to look at the next time.

Deputy Joan Burton: I have dealt with cases in which some institutions sought to include

social protection payments for children with a disability. That is a low level of behaviour.

In my constituency about 30% of properties are rented. It is very obvious that quite a lot of institutions are proceeding to urge or order small-time landlords with one house to sell the property. That triggers an eviction notice from them. In this case the consumers are the renters who find their rights being completely truncated. Do the delegates know of any area where they feel the position could be improved? For instance, a bank could sell a house to the local authority, although this does not happen. The banks seem to require vacant possession. In Dublin West there is a very high proportion of rented properties, as in other parts of Dublin. It is becoming marked. People are receiving eviction notices. Most reasonable landlords and banks give about three months' notice. People do not then move directly into being homeless, but the property will probably be vacant for two to three years while the receivers make arrangements to dispose of it.

Mr. Ger Deering: I appreciate the difficulty caused. As I am sure the Deputy is aware, there are fewer protections in the case of buy-to-let properties than there are in the case of a person's private dwelling house. In some respects, that is the way it should be. The home of a person deserves the ultimate protection. Where loans are not performing, we would be looking at how the bank approached it. The Deputy mentioned a receiver. If a receiver was appointed, we would be looking at whether that was done in accordance with the terms and conditions of the contract and in a reasonable way. Our remit would not extend to protecting the tenant if what is being done is not correct. That would be the Residential Tenancies Board Ireland.

Chairman: I want to go back to Ms Goggin's opening statement in regard to a number of issues. I refer to various parts of her statement. She outlined, for example, that in regard to financial services, consumers were extremely vulnerable. She then stated that it is the view of the Competition and Consumer Protection Commission, CCPC, that the way in which financial institutions have treated their customers is totally unacceptable. She said that consumers have been categorically let down and that, regardless of the financial crisis, consumers' contracts should have been and must be honoured. What is she going to do about that?

Ms Isolde Goggin: As we outlined at the outset, the role where we have a specific mandate in regard to financial services is consumer information and education. We will do our part in making sure that consumers are educated to know what they are getting into. What we do have concerns about are areas where products, including financial services products, are deliberately made extremely complex or are deliberately sold on the basis of something which is not the most important element of it. For instance, in our mortgages options paper, we recommended that we should have a good look at areas such as cash discounts, cash back and so on for mortgages where people can be encouraged to get into a very expensive mortgage or a mortgage that does not suit the needs of the consumer by these type of up-front incentives. We know perfectly well that people tend to go for those without understanding the long-term implications because they are getting into a contract that will be for 20, 25 or 30 years. We would look at issues like that, and that is where I believe we can bring our specific lens to bear.

In terms of enforcement, there are two agencies already in the space of enforcement. We have the enforcement powers under the Consumer Protection Act 2007, but they are the same enforcement powers as the Central Bank, which also has these-----

Chairman: Can I interrupt Ms Goggin? Let us measure the very fine language that would be accepted by most in the context of Ms Goggin's opening statement and what has happened. In 2009, a customer dragged a bank kicking and screaming to the courts. Since then, under

enormous pressure from all sorts of individuals and groups, the banks have been exposed as not only taking money from customers from whom they should not have taken it but of keeping that money. I am talking about theft. From memory, I reckon that in one bank alone some 20 family homes have been lost. Alongside that, we have the same type of action being taken by each bank. Ms Goggin says that is because they were losing their shirt on tracker mortgages. I am asking Ms Goggin, as someone who is supposed to protect the consumer and look at the banks in terms of cartel-like activities, what she says to those people who did not just lose their shirt but their houses. They felt that they were disgraced through the banks. Their credit rating was torn to shreds. Their lives were devastated. We had all the witnesses before this committee. What does the commission intend to do with the banks? Both Mr. Deering and Ms Goggin spoke about the culture that exists in the banks, but I do not see them doing much for the individual consumer or in terms of the effort needed to break the banks from a role where they see themselves as being in a position to rip off the customer whenever they choose. I get no sense of that from Ms Goggin or Mr. Deering.

Ms Isolde Goggin: I believe, and I think there is common agreement, that the number one priority is to achieve redress for those consumers. There are other priorities, including making people accountable for what happened, but the best weapon in the armoury for doing that is the investigation being carried out by the Central Bank because it can deal with that number of people. We are an agency of 90 people. I am not complaining about that. I believe we do a good job with the numbers we have, but there are 20 times that number in the Central Bank. They are not all focused on consumer protection but they are the agency-----

Chairman: We had the Central Bank witnesses before the committee. I am talking about Ms Goggin and her organisation. It appears to me from what she said earlier that the commission is doing nothing for those people who have been seeking redress since 2009. The fact that we are in this space today, in terms of what the banks are now responding to, came about by way of an entirely different pressure. What does Ms Goggin intend to do with the banks, because it appears to me, from answers she gave to Senator Burke, that she is relying on information to come to her? I am sure Ms Goggin is aware of what is going on around her in this State. Looking at the likes of Maurice McCabe and others, does she believe any whistleblower will put their head above the parapet and come and tell her what she needs to know about the banks?

To reinforce that comment, look at what happened to the approximately 2,000 employees of the Bank of Ireland who asked for redress in terms of their tracker mortgages. They were told by the new CEO of that bank that they would not be considered because they were legally literate. That was the comment. How does Ms Goggin match what the commission is doing or not doing with that type of culture and response from the banks and the fact that consumers continue to believe that they are being ripped off and treated badly by banks that, by magic, have come to the same point at the same time about these trackers?

Ms Isolde Goggin: Regarding consumers, as I said, it is not within our power to get redress for those consumers. It is within the power of the Central Bank. Therefore, it has to be the Central Bank that deals with those individual cases and gets redress, and that it does that properly. If the Central Bank has evidence of theft or fraud, it has an obligation to report that to the Garda in the same way-----

Chairman: Ms Goggin's organisation is charged with consumer protection.

Ms Isolde Goggin: We are.

Chairman: What does it do? What is Ms Goggin doing to stop this nonsense in the bank? This is still going on. Bank of Ireland produced another lot of 6,000 that were affected and it is so reluctant to tell us we still do not know today, as we go into Christmas, whether it has dealt with all the numbers in the bank. KBC Bank representatives were before us and showed such disrespect to their customers and this committee, they did not even give us the figures. Ms Goggin represents the agency with the power to do something. What is her agency doing? I keep asking her what she is doing to determine whether there was a cartel in operation and what she is doing to speak to people? Earlier, she used the committee, and it is only today I have heard this from her, to ask whistleblowers to come forward. Why did she not do that earlier? Why is her agency not to the fore on this matter?

Ms Isolde Goggin: The reason we are not to the fore is that there is a specific regulatory agency in the financial services sector with the powers to carry out investigations and to get redress. In regard to our role in competition, we have not seen any specific evidence that we can use to ground an investigation. I have said it previously and am saying it here that if people have information, they should come forward. There has been mention of the number of people in the banks. There must be people who are sufficiently annoyed with the banks, even current or former employees of the banks, that they would face the undoubtedly difficult task of being a whistleblower if there is evidence to give us. It goes beyond that. I would love to find out what was going on in the banks. Were people rewarded and did people get a bonus for selling products wrongly? It is something that must come from the Central Bank's investigations.

Chairman: Do we not know that they did? Was it not said they got a bonus? Is there enough hearsay at least to spark the Competition and Consumer Protection Commission into action and scratch the surface to see if an employee or employees of various banks could be unearthed to tell us the information? How else does the commission collect its information? Will it wait for people to come to it or will it go out and actively ask people if they have seen or heard certain things and if they will come forward? It was done today but that is a bit late.

Ms Isolde Goggin: Bear in mind the Central Bank has been investigating this for seven to eight years and it has an obligation to tell us if it comes across any evidence of cartel-type arrangements. It is not a facility to tell us but a legal obligation to do so. We have been in constant contact over the matter and it just has not happened to date.

Chairman: Mr. Jonathan Sugarman went to the Central Bank and told it a story about his bank that would shock anybody. I doubt, if he had it all back again, that he would come forward as the bank that he complained about was not investigated the way it should have been. That is the experience of a whistleblower, so much more needs to be done to unearth the information required to take a case. That is why I would expect far greater action from the commission. Honestly, I do not see it. All we have seen and heard at this committee, time and again, is how the consumer is ripped off and information is withheld from the consumer if he or she tries to take a case. When such people come forward, records of meetings and tape recordings go missing. Suddenly, if they are pushed and there is energy on the side of the consumer, the bank may stand down or give in, to a certain extent. As Ms Goggin can see from the various witnesses that we had before us, they are worn down by the banks and what is being done. They turn to agencies like the commission for help.

This gives rise to the question of whether the commission is afraid of the banks. Is it afraid to take on the banks in such a way as to make it clear to them that the commission is going about its business? Many years ago an advertisement was put in the paper with regard to planning issues. Ask the employees if they will come forward and if they have a story to tell. The

stories I hear about banks would make the hair stand on one's head. I did not believe them in the beginning but we got the correspondence and had the hearings. The stories only got worse. The commission still has not satisfied me that it is doing anything to represent the consumer or break what is essentially a cartel.

Ms Isolde Goggin: As I have explained with respect to criminal procedure, hearsay is no use to us and we cannot initiate a criminal investigation on the basis of hearsay. If true evidence comes forward that we see will stack up, we have absolutely no fear of taking on an investigation. We have taken on some of the biggest companies in the State, including major industries. We are not behind the door when it comes to putting ourselves forward, but we must make a decision based on the best place to put our resources.

With regard to consumer redress, there are already two State agencies that I believe to be extremely committed to trying to get resolution for consumers in this. They have experience of the sector and know what they are doing. I do not see how we can do more than what we are already for consumers without tripping over each other and complicating the landscape for consumers. We must plough through the process with the Central Bank and the ombudsman as backup to get that form of redress for consumers. We need to get to the end of the process and get the report from the Central Bank. We must consider that and see exactly what was going on. There is a lack of transparency and opaqueness in the practices that were used. Who directed it? Where does it go? Does it come from the very top in banks and were people given orders to act in such a way?

Chairman: It was not somebody at the front desk that decided about the tracker mortgage matter. That must be accepted. Somebody at the front desk did not dictate the interest rates or decide not to answer these customers or tell them there are no phone records. The person at the front desk did not decide what to do in the case of PTSB. None of these people was at the front desk. These decisions were made in the boardrooms of these banks. If each board of each bank made the same decision at the same time, that stinks of a cartel. That is what the people believe. They see the agencies of this State that are there to protect them standing idly by from 2009 until recently, when this whole matter blew up. Has the commission ever spoken to Mr. Pdraic Kissane?

Ms Isolde Goggin: We have not. I know who he is and I am aware of the testimony he gave before the committee.

Chairman: Would it not be interesting to have a conversation with him?

Ms Isolde Goggin: It would be an interesting conversation but I cannot see how he would have evidence of anti-competitive agreements between the banks.

Chairman: You do not know. You have not asked him. That is the point made by Senator Burke. If somebody is trying to gather evidence, will the witness detail the effort made to gather it? The commission has not spoken to Mr. Kissane nor, I am sure, to many more of the individual customers. I cannot go through our individual emails but they are from people who worked in banks. They express concern about what was happening in the banks at the time. Within ten days of an email being raised at a committee, a bank decided to compensate an individual. That woman's biggest fear was that she worked in the bank and she was afraid of losing her job. That is why people rely on somebody like Ms Goggin. Has Mr. O'Leary spoken to Mr. Kissane?

Mr. Fergal O’Leary: I have.

Chairman: How did you find him?

Mr. Fergal O’Leary: As we know, he has a very good grasp on the area. He has spoken to many different complainants. There are complaints before our office as well. He has a very strong knowledge of the area.

Chairman: It is worthwhile.

Ms Isolde Goggin: Yes. I am aware Mr. Kissane has a great deal of evidence and information about relationships between individual consumers and banks. We are seeking evidence of contacts between banks.

Chairman: You do not know if he has that information.

Ms Isolde Goggin: He is a very well-informed individual and I would expect if he had the information, he would have come to us.

Chairman: You are getting paid to do your job. Why do you not ask him about it?

Ms Isolde Goggin: I certainly will. I thank the Chairman for the tip.

Chairman: It is a bit late again.

Ms Isolde Goggin: Developments are occurring all the time in this market.

Chairman: Yes. They have been happening since 2009. The process is very slow when it comes to the consumer. The witness’s attitude in this is one of condemning it loudly and clearly but with very little real action to tackle banks or to support the interests of the consumer. I am really disappointed if that is the case.

I have a question in relation to Ulster Bank and the global restructuring group, perhaps for both of the witnesses. This is a tracker-type issue as well. What is happening in relation to that? Is the witness investigating that?

Mr. Ger Deering: Our investigations and complaints have to be dealt with in private so I cannot comment on any one institution.

Chairman: Okay, let us put it this way. There were restructuring elements to each of the banks. A number of complaints are now emerging about how these banks dealt with the restructuring of good commercial loans and some bad commercial loans that were bundled together for the same individuals. There seems to be no let up or outcome to it. In that context and the current tracker issue, does that sit into the tracker issue or is it something that is being dealt with separately?

Mr. Ger Deering: If we received a complaint in that area, if it had a tracker element, it would sit into the tracker. There are other commercial loans there as well that would be looked at. The committee will be aware that the consumer protection Act of 2015 took care of the situation where restructuring or loans were sold on. There could have been a problem where a regulated entity sold a loan to a non-regulated entity. That would have taken them out of our reach to deal with complaints. However, the consumer protection Act of 2015 makes sure that the person either provides a credit intermediary who is regulated or that the firm it has gone to is regulated. In a situation like that, we can still deal with complaints if it has been moved to

another entity.

In some instances we find that we have two complaints. We may have a complaint where something happened before it was passed on. That would be against the originating financial service provider. Then something has happened with the new entity that it has been sold to. We can deal with those situations. Simply because something transfers from one to another would not prohibit us. However, we would need a complaint from the person concerned. I know the Chairman is interested in this area. An important point is that we can take complaints from businesses as well, as long as the turnover is less than €3 million. Sometimes there is an impression that the Financial Services Ombudsman can only deal with individuals. We do deal with individuals and with small businesses, clubs and organisations as well.

Chairman: I just want to ask a few more questions about what has happened. In an earlier exchange Deputy Doherty was discussing decisions of the witness's office. If those decisions were made in the negative, is the witness saying that they cannot then come forward again?

Mr. Ger Deering: I cannot review that particular decision. However, there are mechanisms now because two things have happened since then. Legislation has been extended to give us a longer period. Parts of some of those complaints would have been allowed but very important parts would have been ruled out. The sale of a tracker mortgage might have been more than six years ago. It is the sale and what happened at that stage that could make a difference, so some of those elements of the complaints can now come back in. The point I was making earlier is we will accept complaints. It is the reason we have put complaints on hold, because we will consider as part of the complaint how the bank dealt with the Central Bank examination. In certain circumstances it may be possible to look at some of those complaints again.

Chairman: I cannot really ask this question because then----

Mr. Ger Deering: If the Chairman does not wish to identify an organisation, he can put the complaint in a general way.

Chairman: If the organisation itself was disallowing the consideration of a tracker, simply because of the position of the person, who perhaps was employed by the bank and that particular position has changed. Is that a change of circumstance?

Mr. Ger Deering: It certainly could be. We have to look at each individual case. If people have a situation like that we suggest that they make a complaint. We will look at it case by case.

Chairman: If the person is still interested in pursuing it, that type of case should then come back to the witness to have him determine whether-----

Mr. Ger Deering: If there is a change in circumstances. We would also look at what impact the examination had on it.

Chairman: Okay. Likewise, where a person has received a payment in terms of their tracker mortgage, if he or she is dissatisfied with that, is to the back that person goes?

Mr. Ger Deering: We are trying to put in place a mechanism. In the normal circumstances, a complainant has to complain to the financial services provider. In many respects they have certainly complained. They have been through the process. We will accept the letter, the final response that the bank has given on their decision on the examination. That could be the final outcome. We will be anxious to move those complaints into investigation and adjudication as

quickly as possible.

Chairman: The witness answered a question for me about trackers and businesses. I have come across cases where it has not been properly investigated by the bank. The direction or advice to be given after that is they take the next step, which is back to----

Mr. Ger Deering: If their turnover is less than €3 million, they can make a complaint to us.

Chairman: This is a similar question relating to the findings of Mr. Deering's office and the interpretation of the bank. If it dates back to 2013 or so, it is still in a position where the witness will go back for other or further information-----

Mr. Ger Deering: Yes, exactly, if there is a different element to it.

Chairman: That is fine. On the general question of the tracker mortgages, where does Mr. Deering see the state of play? Some people have been paid. Commitments have been given by all of the banks. What about the ones that have been reluctant to deal with Mr. Deering or the ones where reluctance has been found on the other side? Is there a change in attitude in the banks? Is it obviously changing or is Mr. Deering still having to deal with banks that are caught in that culture in which they just will not admit that they are wrong?

Mr. Ger Deering: It has changed for some banks. I fine there are differences in the banks. It has changed for some. It has not changed for others. Tomorrow I am meeting the people we deal with at complaint level. I will be telling them that we will be taking things up at CEO level in the banks where we feel we are not getting the co-operation that we should be getting.

Chairman: Does Senator Burke want to come in?

Senator Paddy Burke: Mr. Deering clarified something I did not know existed. He said that there is a €3 million-----

Mr. Ger Deering: Turnover limit.

Senator Paddy Burke: Is it turnover? Or the value of the property?

Mr. Ger Deering: No, it is the turnover and it is in the previous year. If somebody wanted to make a complaint to our office this year, it would relate to whatever their turnover was in 2016, as long as it did not exceed €3 million, which is significant. Many small businesses fall within that.

Senator Paddy Burke: Yes, they do. However, some of their turnover may be less than €3 million but the value of the property may over €3 million. Does that matter?

Mr. Ger Deering: The value of the asset would be irrelevant. It might contribute income which is a different matter. The value of the asset itself would not rule them out.

Senator Paddy Burke: It is strictly on turnover.

Mr. Ger Deering: Yes

Senator Paddy Burke: Does it matter if it is a group of individuals who are together or a company?

Mr. Ger Deering: No it does not. If three or four people have come together and bought a

property or whatever, we would have to take the combined income of the entity-----

Senator Paddy Burke: The combined turnover?

Mr. Ger Deering: Yes, exactly, the combined turnover.

Senator Paddy Burke: If people did not realise that and felt that they were statute barred, is that lifted now? Could they go back?

Mr. Ger Deering: If it is a long-term financial product, and here we are talking about mortgages, it is possible that we could take them.

Senator Paddy Burke: Even if it was business.

Mr. Ger Deering: Yes. The very same system and rules apply to businesses as to individuals. The only difference is the income requirement, that is, the turnover.

Senator Paddy Burke: Can this be applied as far back as is necessary?

Mr. Ger Deering: For a long-term financial product, there is what they call a “long-stop” of 2002. We cannot go beyond that.

Senator Paddy Burke: The Financial Services Ombudsman Bureau cannot go beyond 2002.

Mr. Ger Deering: The other limitation is that of six years after the relationship ends. If they are no longer-----

Senator Paddy Burke: I see.

Mr. Ger Deering: The six years-----

Senator Paddy Burke: That could bar them.

Mr. Ger Deering: It would bar them.

Senator Paddy Burke: They would have had to have made a complaint to the ombudsman within-----

Mr. Ger Deering: The complaint would have to be within six years of the life of the product, if I can put it that way.

Chairman: I wish to return to a comment that was made on the insurance industry, the costs of insurance and how prices have fallen. I have been reading commentary to that effect in the media and I have to say that I would not make a blanket statement like that. I still hear complaints from individuals and, indeed, some companies to the effect that there has been no change in insurance costs. They read these headlines in the newspaper about a drop in insurance premiums with disbelief because the evidence is that the people who are seeking insurance cover are those who have it and are renewing it. There are enormous changes in pricing, but they are all upwards. In most of the cases that I have been dealing with, the insurance premium has gone up, not down. I do not know from where people are getting their facts because the information that comes before this committee clearly shows that it is a mixed bag, and that a simple statement that prices are falling is simply untrue.

Mr. Fergal O’Leary: That impression would have come from the Central Statistics Office,

CSO, figures, but the Chairman is right. We have had similar calls from people who are continuing to see increases. We said earlier that there a number of issues around prices and premia in this sector remain. Hopefully, the cost of insurance working group can help to bring them down. We also believe our investigation will bring about an additional change in the market, as will the European Commission's investigation.

Senator Paddy Burke: I have a further question for Mr. Deering. If a complaint is made and is upheld by the Financial Services Ombudsman Bureau, what redress is available? Where does the individual or group of individuals involved go then?

Mr. Ger Deering: I would decide the level of compensation and also direct rectification. In the case of tracker mortgages, for example, there are two elements. One is-----

Senator Paddy Burke: The product could also be a business loan.

Mr. Ger Deering: Indeed. One element is direct rectification, which would mean putting the complainant back on the correct rate or putting him or her back on a tracker. Separately, I can direct compensation of up to €250,000. Those are two separate things and they are not mutually exclusive. Both can happen. A person can get rectification and I can direct the financial services provider to give compensation as well.

Senator Paddy Burke: Ms Goggin spoke about cartels. If the Competition and Consumer Protection Commission found that there was a cartel in operation, be it in the insurance industry, in respect of which it is carrying out an investigation at the moment, or the banking industry, as posited by the Cathaoirleach, what kind of sanctions, if any, can the commission put in place?

Ms Isolde Goggin: The sanctions are very considerable. That would be pursued as a criminal offence. It is an indictable offence. We would prepare a file for the Office of the Director of Public Prosecutions, which would decide whether or not to take the case in the criminal courts. There are sanctions of up to ten years' imprisonment, and fines of up to €10 million or 10% of turnover, whichever is the greater.

Chairman: The committee will meet the banks again to discuss this issue. At a previous meeting, it was agreed that we would continue with the tracker mortgage investigation. We agreed that we would then hold a separate examination of how businesses were treated by the banks. The evidence that we have gathered has all the makings of a further scandal. What questions would the witnesses ask the banks?

My second question concerns legislation. Where would the witnesses like to see legislation for each of their areas improved? Are there any weaknesses in the law?

Ms Isolde Goggin: I will start, but I might ask Mr. O'Leary to comment in a minute. Regarding the banks, I would raise the issue of culture. Where were these decisions made and were individuals rewarded for illegally pushing people off tracker mortgages? It is important to understand the chain of command and whether, as the Chairman very rightly inquired, this goes to the very top. There must be accountability and we need to have understanding of culture.

I mentioned our own powers earlier. We would welcome the ability to impose fines on the basis of the civil burden of proof. Civil fines could be levied where there is not the degree of evidence needed to get into a full criminal hearing in the Central Criminal Court. One feature of our own legislation that I think is very useful is director disqualification. It is a real disincentive to engage in illegal conduct if people feel that not only will they be penalised for it, they

will also be disbarred as directors for the next five years, or whatever it might be. If it is possible to have some of that brought in as individual sanctions in regulating the banking sector, that would be very useful for cases where the accountability goes right to the very top.

Mr. Fergal O’Leary: This is more a general comment than one specific to the tracker mortgage issue. One of the main traits of financial institutions that causes great distress to people is that consumers simply cannot talk to somebody in these banks who knows what is in their file. That got a little bit better a couple of years ago. However, a lot of the calls to our helpline are from individuals who are in contact with their bank and find that it does not know who they are, what they are entitled to or what they are owed. That ultimately speaks to an issue around the banks’ respect for their customers. A higher standard should be expected in an area where somebody is reliant on his or her family home and the finance that the bank provides to it. It might be a small consideration in the wider scheme of things, but we see it day in, day out. It causes huge distress and frustration to consumers in this country.

Mr. Ger Deering: I would ask the banks why they are so determined not to sit down and do the right thing for their customers. I say that even when they bring complaints to our office. From time to time, I have been threatened with judicial review by banks claiming that I am dealing with complaints that are outside my jurisdiction. In our new dispute resolution process, we have told the financial service providers not to worry as much about jurisdiction as about the customer. We have highlighted that this is a customer of theirs who is unhappy and has a complaint. Yet the banks argue that we do not have jurisdiction to deal with it when we are trying to solve the problem for them. I would tell the banks to engage in our dispute resolution processes, because that has the potential to bring solutions much more quickly and in a much less difficult way.

The other issue is very important and it was discussed quite extensively between the Central Bank and this committee. The Central Bank believes that people who could be impacted upon by this examination have been identified and that some banks are unwilling to do the right thing by those complainants. Those complainants need to know that they are affected so that they can make a complaint to us, for example. The committee could ask the banks how they will notify these people. It is important that they know who they are. The Financial Services Ombudsman Bureau does not know who they are. The Central Bank may or may not know the individual names, though I doubt they do. The banks know who they are, and those people who have been affected need to know. That is what I would ask the banks; how they are going to notify people who believe that they have been affected or whom the Central Bank believes have been impacted upon and who have not received rectification or compensation from the banks.

Ms Elaine Cassidy: I have a comment on the issue of legislation. The committee asked if there were weaknesses. Our new Act commences on 1 January. It allows us to publicise findings, which is very welcome, but it obliges us to do so with the name of the institution redacted. I do not think that is very dissuasive for the institutions involved. If the banks were named, it would really encourage a lot more compliance.

Chairman: What legislation is the witness referring to?

Mr. Ger Deering: The Financial Services and Pensions Ombudsman Act 2017.

Chairman: On 1 January. Therefore, they name the institution.

Ms Elaine Cassidy: If the institution was named, it would allow consumers to look at cases

that are published and know, if they were in a similar situation, they could take a complaint too. It would also have a dissuasive effect on the institutions involved.

Chairman: Okay. I have one last question in relation to a complaint. It is to do with payment protection. The person who has written here is one of many. The person writes that in the case of redundancy or illness, one's mortgage will be covered or paid, and that this, however, was not the case for many. Even though the bank knew the correspondent was self-employed and did not qualify to claim this policy, the policy product was sold to that person. The bank blamed the insurance company, the insurance company blamed the bank and the regulator said there was nothing that could be done because the product was taken out over seven years ago.

Senator Paddy Burke: Chairman, apologies, I have to go to a vote in the Seanad.

Chairman: That is essential. Keep the House in order. Go ahead. It is Senator Paddy Burke's last chance to have an election before Christmas.

Normally, in such a case, one might have taken out the policy seven years ago or whenever, but it takes up to the time when one triggers the need for the policy.

Mr. Ger Deering: That was a real difficulty with the six-year rule when it was there. As the Chairman states, one does not know until one goes to draw on it that one has a problem. The legislation provides that where it is a long-term product we can go back further but we would have to get the details. I suggest that the person contact us. For example, some payment protection insurance policies have a life assurance element. If that is the case, it becomes a long-term product. I would like to know more about that before I could comment.

Chairman: Constituents have written in on that type of issue. Is it best that they would explain their circumstances and write directly to the Financial Services Ombudsman so that Mr. Deering could adjudicate on it?

Mr. Ger Deering: Exactly.

Chairman: Is there anything further either one of you would like to add?

Mr. Ger Deering: I suppose I would just say that the office has been working on trackers since 2009. There were decisions handed down that directed the banks to put borrowers back on trackers and as we know, that got frustrated through the legal system, the High Court and then on to the Supreme Court. We are very conscious of the suffering of people out there. I would, once again, say to the banks that they really need to come on board with the Central Bank process because we are ready to deal with individual complaints afterwards but that will take a lot more time than the Central Bank process.

The Chairman mentioned payment protection. It is interesting to look at the experience in the UK. There was a huge issue with mis-selling of payment protection in the UK and the regulator did not deal with it. It was left with the ombudsman service to deal with each individual complaint. They have been dealing with millions of them and it has clogged up their office. If the banks now co-operate with the process as quickly as possible, that is in the best interest of all of the people, whether they have complaints with our office or elsewhere.

Chairman: Would Mr. Deering have had a number of judicial reviews or threats?

Mr. Ger Deering: We have had a number of High Court challenges. It is an ongoing feature.

Chairman: Are these threats of proceedings?

Mr. Ger Deering: No, no.

Chairman: I am asking about the threat in order to frustrate the ombudsman.

Mr. Ger Deering: Sorry, correct. I have had threats of judicial review where a provider is arguing whether we have jurisdiction or not to take a complaint instead of stating, "It is my customer who has a problem and let us solve it."

Chairman: Has Ms Goggin received any threats of legal action against her agency?

Mr. Fergal O'Leary: Absolutely, although not specifically in relation to tracker mortgages. We were in the Supreme Court earlier this year relating to a case of bagged cement and our search powers that had a big impact on us over the course of a number of years. There is due process and that is why we need to be extremely careful in terms of when we open an investigation and when we do not.

Chairman: On banks, would there have been much legal representation made to the Competition and Consumer Protection Commission?

Mr. Fergal O'Leary: Not specifically in relation to banks, no.

Chairman: Before we conclude, I thank the witnesses for attending the meeting this morning and for their input. I would encourage them to go to the limits of the law to expose what happened in the banks. That is what people expect. All they want is fair play. They believe that they are not getting fair play, that the balance is tilted against them. We will be here again in the new year. Presumably, we will go through a similar-type meeting after we deal with the banks. I would encourage the witnesses to consider in detail what the consumers are saying and to consider what actually happened in the banks, and to do what they can to investigate and expose it. It needs to be done, if we are to have any kind of an ethical banking future.

The joint committee adjourned at 12.36 p.m. until 9.30 a.m. on Thursday, 14 December 2018.